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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 100.

**THE VIRGINIA AND ALABAMA COAL COMPANY, SUING
IN ITS OWN BEHALF AND FOR THE USE OF THE
SLOSS IRON AND STEEL COMPANY, APPELLANT,**

vs.

**THE CENTRAL RAILROAD AND BANKING COMPANY OF
GEORGIA ET AL.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIFTH CIRCUIT.**

**PETITION FILED JANUARY 13, 1898.
CERTIORARI AND RETURN FILED FEBRUARY 5, 1898.**

(16,138.)

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(16,138.)

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No. 319.

In the United States Circuit Court, Eastern Division, Southern District of Georgia.

ROWENA M. CLARKE <i>et al.</i>	}	Bill, Dependent Bills, etc.
<i>vs.</i> CENTRAL RAILROAD AND BANKING COMPANY OF GEORGIA <i>et al.</i>		
THE CENTRAL RAILROAD AND BANK- ING COMPANY OF GEORGIA <i>d al.</i>	}	Intervention of the Vir- ginia and Alabama Coal Company and Sloss Iron and Steel Company.
<i>vs.</i> THE FARMERS' LOAN AND TRUST COM- PANY OF NEW YORK <i>et al.</i>		
THE FARMERS' LOAN AND TRUST COM- PANY OF NEW YORK <i>et al.</i>	}	
<i>vs.</i> THE CENTRAL RAILROAD AND BANK- ING COMPANY OF GEORGIA <i>et al.</i>		

Agreed Statement of Facts.

Original record filed Aug. 6, 1894.
Printed copy filed Jan. 24, 1895.

b UNITED STATES OF AMERICA, }
Fifth Judicial District. }

Pleas and proceedings had and done at a regular term of the United States circuit court of appeals for the fifth circuit, begun and held pursuant to law on the third Monday of November, A. D. 1894, in the court-room of said court, in the city of New Orleans, State of Louisiana, before the Honorable Don A. Pardee, United States circuit judge for the fifth judicial circuit; Honorable A. P. McCormick, United States circuit judge for the fifth judicial circuit, and the Honorable Harry T. Toulmin, United States district judge for the southern district of Alabama.

THE VIRGINIA AND ALABAMA COAL COMPANY	}
<i>vs.</i> THE CENTRAL RAILROAD AND BANKING COMPANY OF GEORGIA.	

Be it remembered that heretofore, to wit, on the 6th day of August, 1894, a transcript of the record of the above-styled cause from the circuit court of the United States for the southern district of Georgia was filed in the office of the clerk of said United States circuit court of appeals for the fifth judicial circuit, in the words and figures following, to wit:

1 In the United States Circuit Court, Eastern Division, Southern District of Georgia.

ROWENA M. CLARKE <i>et al.</i>	}	Bill, Dependent Bills, &c.
<i>vs.</i> CENTRAL RAILROAD AND BANKING COMPANY OF GEORGIA <i>et al.</i>		
THE CENTRAL RAILROAD AND BANK- ING COMPANY OF GEORGIA <i>et al.</i>	}	Intervention of the Vir- ginia and Alabama Coal Company and Sloss Iron and Steel Company.
<i>vs.</i> THE FARMERS' LOAN AND TRUST COM- PANY OF NEW YORK <i>et al.</i>		
THE FARMERS' LOAN AND TRUST COM- PANY OF NEW YORK <i>et al.</i>	}	
<i>vs.</i> THE CENTRAL RAILROAD AND BANK- ING COMPANY OF GEORGIA <i>et al.</i>		

Agreed Statement of Facts.

In order to abridge the transcript of the record and evidence on appeal in the intervention of the Virginia & Alabama Coal Company and Sloss Iron & Steel Company in the above-stated causes, the following statement of the pleadings and facts shown in the record of the original causes in which the in-ventions were filed is agreed upon:

1. On June the 1st, 1891, the Central Railroad and Banking Company of Georgia, a corporation under the laws of Georgia owning and operating a line of railroad from Atlanta, Georgia, to Savannah, Georgia, executed a lease for ninety-nine years of said railroad to the Georgia Pacific Railway Company, a corporation organized under the laws of Georgia and also of certain other lines of railroad which had been leased by the Central Company and also covenanted to give the Georgia Pacific Company the control of certain other lines of road which the Central Company controlled by stock ownership, as will more fully appear by a copy of the lease hereto attached.
2. Previous to June 1st, 1891, the Georgia Pacific Railroad Company had leased its own line of railroad extending from Atlanta, to Birmingham, Alabama, to the Richmond and Danville Railroad Company, a corporation organized under the laws of Virginia, and which owned or controlled by a lease a line of railroad from Atlanta to Washington, D. C.
3. On June 1st, 1891, the Richmond and Danville Railroad Company, through its officers, went into possession of the railroads of the Central Railroad & Banking Company of Georgia referred to in paragraph 1, and operated the same until March 4th, 1892.
4. On March 4th, 1892, Mrs. Rowena M. Clarke, a citizen of South

Carolina, and a stockholder of the Central Railroad and Banking Company, filed her bill, on behalf of herself and other stockholders of the Central Company in the circuit court of the United States for the eastern division of the southern district of Georgia against the Central Railroad and Banking Company of Georgia, the Georgia Pacific Railroad Company, the Richmond and Danville Railroad Company and other defendants, all citizens of States other than South Carolina. The purpose of the bill being among other things to cancel the lease of the Central railroad lines to the Georgia Pacific Railroad Company, as being *ultra vires* and not authorized by the charter of the Central Railroad and Banking Company of Georgia, or the laws of Georgia, and for the further purpose of having a receiver appointed to take possession of the railroad lines of the Central Railroad and Banking Company of Georgia which were charged to be in illegal and unauthorized control and possession of the Richmond and Danville Railroad Company, and to hold the same until a new board of directors could be elected, into whose hands the said property could be delivered by the receiver, it being charged that the then existing board of directors had wrongfully abandoned said property to the Richmond and Danville Railroad Company. A temporary receiver was at once appointed for the Central Railroad and Banking Company of Georgia, but the officers of the Richmond and Danville Railroad Company were allowed to continue to operate the Central lines under the temporary receiver without change of books or accounts, until a hearing on a rule *nisi* for injunction and permanent receiver should be heard. Other stockholders joined the complainants and were made co-complainants.

5. On the hearing March 24th, 1892, on the rule *nisi* for injunction and receiver on the above bill, the Richmond and Danville Railroad Company disclaimed all right to hold possession or operate the railroad lines of the Central Railroad and Banking Company, and in addition to such disclaimer stated in its formal answer its relation to the Central properties as follows:

"That on or about the first day of June, 1891, at the request of the Georgia Pacific Railway Company, this defendant assumed the task of managing and operating the railway and steamship lines of the Central Railroad and Banking Company of Georgia, and has since managed and operated the same until the appointment of E. P. Alexander, the receiver in the case. When this defendant was served in this case, however, and discovered that objection was made in the courts to the management and operation by this company of the said railway and steamship lines, it immediately relinquished possession thereof to the receiver appointed by the court of all of the same."

6. The Georgia Pacific Railway Company likewise filed its answer to said bill at the hearing on said rule in which it was answered as follows:

"It is true that on the first day of June, in the year eighteen hundred and ninety-one, negotiations having been pending between the Central Railroad and Banking Company of Georgia and the Georgia

Pacific Railway Company, looking to the execution of a lease from the said Central Railroad Company to the said Pacific Railway Company, an instrument in writing was signed pursuant to the direction of the board of directors of said Georgia Pacific Railway Company by Joseph Bryan, its president, which instrument *purposed* to be a lease of the properties of the Central Railroad and Banking Company of Georgia to the said Georgia Pacific Railway Company, but that the said Bryan was not authorized, nor was the said board of directors authorized to become such lessee company by any resolution or other action of the stockholders of this defendant company, nor has the same been since ratified, approved or sanctioned by any resolution or other action of said stockholders, nor has the same been submitted to the stockholders at any time for their approval, sanction or ratification.

"For this and other reasons it is claimed that the said instrument in writing has not created a valid contract binding upon this defendant, and this defendant submits the question of whether

4 any liability or responsibility has been created by the said instrument in writing to this honorable court for adjudication.

"On the 19th day of December, in the year eighteen hundred and eighty-eight, this defendant entered into an agreement with the Richmond and Danville Railroad Company, by which it leased to the latter all of its lines of railroad and other property, and in pursuance of which it delivered possession of same, and since that date the same has been operated exclusively by the said Richmond and Danville Railroad Company. Since said time, this defendant has not been in possession of any of its own lines of railroad or other property used in connection therewith, nor has it carried on any business as a common carrier, nor operated any lines of railroad whatsoever.

"This defendant has not, under said alleged contract with the said Central Railroad and Banking Company of Georgia, been in possession at any time of any of the property mentioned herein, nor has it assumed or exercised any control over the same, except that on or about the 1st day of June, 1891, it requested the Richmond and Danville Railroad Company to assume the control and management of the property of the Central Railroad and Banking Company of Georgia, with which request the said Richmond and Danville Railroad Company complied.

"This defendant has no means of knowing, and does not know what property, if any, of the Central Railroad and Banking Company is now, or ever has been in possession of the said Richmond and Danville Railroad Company, under said alleged contract of lease, of date June 1st, 1891, and knows nothing of the dealings in pursuance thereof between the said Central Railroad and Banking Company of Georgia and the said Richmond and Danville Railroad Company."

7. At said hearing after the filing of the aforesaid answers of the Georgia Pacific and Richmond and Danville Companies, the Central Railroad and Banking Company filed an answer submitting to the

jurisdiction of the court and stating that it had up to that time continued in good faith to assert the legality and validity of said lease, but that in view of the disclaimers filed by said companies,

5 "the defendant submits to the jurisdiction of the court as to the course it shall pursue in reference to the said contract of lease, and prays its direction and instruction in the premises."

8. At the hearing the complainants by leave of the court on March 28th, 1892, amended their bill by the following additional averments; making the following-named Georgia and Alabama corporations parties defendant, as follows:

"And now come the complainants in the above-stated cause and with leave of the court first had and obtained, amend their bill heretofore filed in the cause and allege as follows:

"(1.) That the line from Montgomery, Ala., to Eufaula, Ala., stated to be operated by the Central Railroad and Banking Company of Georgia, is the property of a separate corporation known as the Montgomery & Eufaula Railway Company, all of the capital stock of which is owned by the Central Railroad and Banking Company of Georgia, and that the same is practically operated by said company.

"(2.) That several of the lines stated in said bill are operated by the Savannah & Western Railroad Company which is a separate corporation, all of the capital stock of which is owned by the Central Railroad and Banking Company of Georgia, and which is practically operated by said latter company.

"(3.) That the steamship lines named in the bill are operated partly by the Ocean Steamship Company of Savannah, a corporation in which all of the capital stock is owned by the Central Railroad and Banking Company of Georgia, and which, in its turn, owns all of the capital stock of the New England Steamship Company, another corporation which owns the balance of said steamship lines.

"And complainants allege that said corporation should be made parties defendant to the bill praying the appointment of a receiver for, and in the granting of injunction as to them in the same manner as is prayed in the original bill as to the Central Railroad and Banking Company of Georgia.

DAN'L W. ROUNTREE,
MARION ERWIN,
Solicitors for Complainants."

6 We here acknowledge notice of the foregoing amendment and acknowledge service of subpoena in the above-stated cause on behalf of the Montgomery & Eufaula Railway Company; the Savannah & Western Railroad Company; the Ocean Steamship Company of Savannah, and the New England and Savannah Steamship Company.

Macon, Ga., this 28th day of March, 1892.

LAWTON & CUNNINGHAM,
Solicitors for Other Def'ts.

Amendment allowed March 28th, 1892.

EMORY SPEER,

U. S. Judge.

9. The court at the hearing on rule *nisi*, on March 28th, 1892, made the following order:

In the Circuit Court of the United States for the Eastern Division,
Southern District of Georgia.

MRS. ROWENA M. CLARKE <i>et al.</i>	}	Bill for Injunction, Receiver, &c. Interlocutory Decree.
<i>vs.</i>		
THE CENTRAL RAILROAD AND BANK- ING COMPANY <i>et al.</i>		

The above-stated cause came on to be heard upon the motion for the appointment of a receiver and for an injunction *pendente lite*, and was argued; and it appearing to the court that since the filing of the bill in the above-stated cause and the appointment of a temporary receiver of the property and assets of the Central Railroad and Banking Company of Georgia, that the Richmond and Danville Railroad Company which was in possession of said railroad and other property of the Central Railroad and Banking Company of Georgia at the time of the filing of said bill, has by its pleading abandoned the possession of said railroad and property to the court and the stockholders of the Central Railroad and Banking Company of Georgia, and has relinquished all right to have said property restored to said Richmond and Danville Railroad Company under any claim arising out of the alleged lease attacked by the bill of the complainants; and it further appearing to the court that the Central Railroad and Banking Company of Georgia, has submitted itself to the jurisdiction of the court, as to the course it shall pursue in reference to said alleged contract and lease of its property to the Georgia Pacific Railway Company and prayed the direction and instruction of the court in the premises, and expressed its willingness to resume possession of its property and the management of its said railroad; and it further appearing to the court that 42,200 shares of the stock of the Central Railroad and Banking Company of Georgia is carried on the list of the stockholders of said Central Railroad and Banking Company of Georgia in the name of the Central Trust Company of New York, the voting power of the same, however, being exercised by the Richmond and West Point Terminal Railway and Warehouse Company, and have been so exercised by said last-mentioned company since January, 1888, and it further appearing to the court that the acquisition and holding of said 42,200 shares as above set forth, the same constituting a majority of the stock of the Central Railroad and Banking Company of Georgia for the purpose of keeping perpetual control of the same was and is in violation of the constitution and laws of the State of Georgia; and it further appearing that the present directors of the Central Railroad and Banking Company of Georgia were elected at an elec-

tion in which the vote of said 42,200 shares of stock controlled, it is therefore ordered and adjudged :

First. That said Central Railroad and Banking Company of Georgia and its directors are enjoined and prohibited *pendente lite* from allowing the said Central Trust Company of New York or the said Richmond and West Point Terminal Railway and Warehouse Company, or any other railroad company competing with the Central Railroad of Georgia that may, pending this order, acquire ownership of said stock, from voting said 42,200 shares of the stock of said Central Railroad and Banking Company of Georgia are entitled to vote under their charter.

It is further ordered that E. P. Alexander, Joseph Hull, E. P. Howell, James Swann, J. K. Garnett, A. Vetsburg, Charles H. Phinizy, H. T. Inman, George J. Mills, Henry R. Jackson and U. B. Harrold be, and they are hereby, appointed receivers of this court of the railroad property and assets of the said Central Railroad and Banking Company of Georgia, to take charge of the same, and to operate said railroad with the usual powers granted to receivers of railroads

8 until there can be a reorganization of said board of directors of said Central Railroad and Banking Company of Georgia, under and in pursuance of the provisions of the charter of the said Central Railroad and Banking Company of Georgia, and of the order of this court hereinafter made and to turn over said railroad and said property and assets to said newly elected board of directors when the same shall be reorganized as aforesaid upon the further order of this court.

Said receivers so appointed are hereby relieved from giving bond, but are directed to take an oath for the faithful performance of duties as receivers, before the clerk of this court or some officer duly authorized to administer oaths.

E. P. Alexander heretofore appointed temporary receiver of this court shall immediately turn over to the receivers hereby appointed, all and singular the assets of the Central Railroad and Banking Company of Georgia in his hands, and all obligations or liabilities, whether arising *ex contractu* or *ex delicto*, which may have been incurred by him in the administration of the trust confided to him in this cause, and all accounts for current expenses due by the said Central Railroad and Banking Company of Georgia, including claims for personal injury and freight claims, and all such other accounts and claims as are usually settled from day to day in the ordinary course of business shall be assumed and discharged in the regular course by the receivers hereby appointed.

It is further ordered that said receivers shall comply with the orders of this court heretofore made in reference to paying the employees who operated the railroads of the Central Railroad and Banking Company of Georgia while the same was in possession of the Richmond and Danville Railroad Company, the ultimate liability for the payment of the same as between said companies and the Georgia Pacific Railway Company being reserved.

It is further ordered that said directors herein appointed receivers as aforesaid shall have and exercise in the operation of said railroad

and in the conduct of ordinary business of said company all the powers belonging to said directors of said company under its charter and in accordance with the said charter and by-laws of said company not inconsistent with this order nor the possession of said property by this court; and that as the directors of said company, they shall have the power to elect a president and to fill any vacancy

9 or vacancies in their number in the same manner as is provided for the filling of vacancies which may occur by resignation or otherwise in the board under the charter, but shall not pledge or dispose of any of the securities of said company to raise money, without the approval of this court, except in the regular course of business.

It is further ordered that an election for directors of the Central Railroad and Banking Company of Georgia shall be held at the principal office of the company in the city of Savannah, on the 16th day of May, 1892, at such hours as may be fixed by the charter and the by-laws of the company for such election, and that at such election no votes shall be received on behalf of the 42,200 shares of stock standing in the name of the Central Trust Company of New York, and alleged in the bill to be controlled by the Richmond & West Point Terminal Railway and Warehouse Company unless upon a *bona fide* transfer of the same, approved by the court, and that the directors elected by the stockholders at such election shall, upon their qualification, constitute the board of directors of the Central Railroad and Banking Company of Georgia until the next election.

It is further ordered that the receivers herein appointed shall also take possession of and operate all the property and assets of the Ocean Steamship Company of Savannah, the New England and Savannah Steamship Company, the Savannah and Western Railroad Company, and the Montgomery and Eufaula Railway Company in the same manner as above provided for and as part of the assets and system of the Central Railroad and Banking Company of Georgia.

It is further ordered that the costs of this court, exclusive of counsel fees, shall be advanced by the receivers, the ultimate liability for the same to be hereafter decided. The question of counsel fees for complainants' solicitors is not passed on at this time.

DON A. PARDEE,
Circuit Judge.
EMORY SPEER,
District Judge.

Macon, Ga., March 28th, 1892.

10. The new board of directors of the Central Company was elected, but instead of applying to the court for the properties, they, on July 4th, 1892, caused the Central Company to file in the court a dependent bill against the Farmers' Loan and Trust Company of New York, trustee, and other creditors, in which it set up that by reason of the fact that its revenues from June 1st, 1891, to March 4th, 1892, had been diverted and appropriated by the Richmond and Danville Railroad Company, and other causes,

it was unable to meet its maturity obligations and had defaulted on July 1st, 1892, on the semi-annual interest due on \$5,000,000 mortgage bonds dated October 1st, 1872, for which the Farmers' Loan and Trust Company was trustee, and that for these reasons the directors were unable to assume the management of the property, and requesting the court by proper process to call upon its creditors to come into court, and that the court would administer the property for the benefit of all interested. Neither the Richmond and Danville Railroad Company nor the Georgia Pacific Railway Company were mentioned as parties to this bill, but the bill was filed as ancillary to the Rowena M. Clarke bill. To the rule *nisi* on this bill, the Farmers' Loan and Trust Company filed the following proceeding:

"In the Circuit Court of the United States, Southern District of Georgia, Eastern Division.

THE CENTRAL RAILROAD AND BANKING COMPANY OF GEORGIA }
vs.

THE FARMERS' LOAN AND TRUST COMPANY *et al.*

To the rule to show cause why a permanent receiver in the above case should not be appointed, personally appeared before me, the court, on July 14th, George A. Mercer, Esq., solicitor, and read and submitted to the court the telegram, of which the following is a true copy, received by him from the New York counsel of said defendant:

"NEW YORK, July 12th, 1892.

"To George A. Mercer, Savannah:

"Please attend at Macon on the 14th and assent to continuance of receivership.

"(Signed)

TURNER, McCLURE & RALSTON."

11 Said solicitor further stated that he had no authority at this time to acknowledge service on said bill or to enter appearance.

Very respectfully,

GEORGE A. MERCER.

Under the dependent bill, all the receivers, with the exception of H. M. Comer, were discharged, and he was on July 15th, 1892, continued as receiver.

This dependent bill also made parties defendant of two corporations not theretofore parties to the Rowena M. Clarke bill, to wit: The Port Royal and Augusta Railway Company and The Port Royal and Western Carolina Railway Company, both corporations under the laws of Georgia and South Carolina, it being averred that they were a part of the system of the Central Railroad and Banking Company of Georgia, and that they were controlled and operated by the Central railroad through the ownership of the majority stock of said companies.

The new defendants made the following averments in their answers:

Answer of Port Royal and Augusta Railway Company.

THE CENTRAL RAILROAD AND BANKING COMPANY OF GEORGIA, Complainant, and THE FARMERS' LOAN AND TRUST COM- PANY <i>et al.</i> , Defendants.	}	In Equity. Bill for In- junction, Relief, &c.
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The separate answer of the defendant The Port Royal and Augusta Railway Company.

This defendant for answer to the complainant's above bill, or such parts thereof as it is advised it is necessary and material for it to answer, answering, says:

12 That it admits that said complainant is the owner of the capital stock and bonds of this defendant, as it avers in said bill, and that it operates said railroad of this defendant as a part of its system, accounting for its earnings to its stockholders and providing for its obligations as the same mature.

That the operation of the said railroad in connection with the said system of the Central Railroad and Banking Company of Georgia is carried on by the general officers of said company at a great saving to this defendant, and it is to the advantage of this company that the integrity of the system of the Central railroad be maintained. The disintegration of said system would entail much loss on this defendant and would render it almost impossible for it to maintain its corporate existence.

And this defendant prays that this may be taken as an answer not only to said bill of complaint, but also as an answer to the rule to show cause granted on July 4th, 1892, and returnable July 14th, 1892, and this defendant expresses its desire that the appointment of H. M. Comer as receiver in accordance with the prayer of said bill be made permanent.

And this defendant, having fully answered, prays to be hence dismissed with its reasonable costs in this behalf.

In witness and verification whereof, the said defendant has caused its president to sign this answer, and its corporate seal, attested by its secretary, to be hereto affixed, this 13th day of July, 1892.

H. M. COMER, *President.*

[Seal of Port Royal and Augusta Railway Company.]

ED. WORKMAN, *Secretary.*

Filed in office July 14th, 1892.

L. M. ERWIN,
Deputy Clerk.

13 *Answer of Port Royal and Western Carolina Railway Company.*

In the Fifth Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

THE CENTRAL RAILROAD AND BANKING COMPANY OF GEORGIA, Complainants, and THE FARMERS' LOAN AND TRUST COM- PANY <i>et al.</i> , Defendants.	}	In Equity. Bill for In- junction, Relief, &c.
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The separate answer of the defendant The Port Royal and Western Carolina Railway Company.

This defendant for answer to the complainant's above bill or such parts thereof as it is advised — is necessary or material for it to answer, answering, says:

That it admits that said complainant is the owner of the capital stock and bonds of this defendant, as it avers in said bill, and that it operates said railroad of this defendant as a part of its system, accounting for its earnings to its stockholders and providing for its obligations as the same mature.

That the operation of said railroad in connection with the said system of the Central Railroad and Banking Company of Georgia is carried on by the general officers of said company at a great saving to this defendant, and it is to the advantage of this company that the integrity of the system of the Central railroad be maintained. The disintegration of said system would entail much loss on this defendant, and would render it almost impossible for it to — its corporate existence.

And this defendant prays that this may be taken as an answer not only to said bill of complaint, but also as an answer to the rule to show cause granted July 4th, 1892, and returnable July 14th, 1892, and this defendant expresses its desire that the appointment of H. M. Comer as receiver, in accordance with the prayer of said bill, be made permanent.

And this defendant, having fully answered, prays to be hence dismissed with its reasonable costs in this behalf.

14 In witness and verification whereof, the said defendant has caused its president to sign this answer, and its corporate seal attested by its secretary to be hereto affixed this 13th day of July, 1892.

In pursuance of a resolution of its board of directors held in Augusta, July 12th, 1892.

H. M. COMER, *President.*

[Seal of the Port Royal and Western Carolina Railway.]

ED. WORKMAN, *Secretary.*

Filed in office, July 14th, 1892.

L. M. ERWIN,
Deputy Clerk.

11. On June 16th, 1893, the circuit court for the southern district of Georgia discharged the Port Royal and Augusta Railway Company from the receivership under the dependent bill of the Central Railroad and Banking Company of Georgia. The court stating in the opinion filed as follows:

"The dependent bill does not appear to be in anywise ancillary to or dependent on the Rowena M. Clarke bill, in so far at least as the Port Royal and Augusta railway is concerned.

"The Port Royal and Augusta Railway Company is a distinct corporation, fully organized with all of its rights as such in full force, and the Central Railroad and Banking Company has no right to its possession and control save through the legitimate influence it may exert as a majority stockholder."

A similar order discharging the Port Royal and Western Carolina Railway Company from the receivership under the dependent bill of the Central Company was also made for the same reason.

12. On the 30th day of March, 1893, the Central Trust Company of New York, trustee, filed bills simultaneously in the middle district of Alabama and in the eastern division southern district of Georgia against the Savannah and Western Railroad Company and against H. M. Comer, receiver of the Central Railroad and Banking Company of Georgia to foreclose a mortgage for some seven million dollars on the properties of the Savannah and Western Railroad Company, and asking for the appointment of a separate receiver for these properties.

15 On the 15th day of May, 1893, orders were simultaneously entered in the said cause in the middle district of Alabama and in the southern district of Georgia appointing H. M. Comer and R. J. Lowry receivers of the property and assets of the Savannah and Western Railroad Company, and directing them until the further order of the court to continue to operate said Savannah and Western properties as part of the system of the Central Railroad and Banking Company of Georgia, under the then general superintendent or such successors as both receivers herein appointed may agree upon, in all respects as said properties were then being operated and managed.

13. On January 23d, 1893, the Farmers' Loan and Trust Company of New York, trustee for the mortgage bondholders of the Central Railroad and Banking Company of Georgia, filed its dependent bill in said court for the foreclosure of the five-million-dollar mortgage on the main stem of the Central railroad from Atlanta to Savannah and to have a receiver appointed to collect and apply to the said debt the income of the road which was likewise pledged in said mortgage.

On January 23d, 1893, the court extended the receivership to that bill, appointing said H. M. Comer receiver under it and in connection with his former appointments.

14. The semi-annual interest due the Farmers' Loan and Trust Company, trustee on the five million dollars of mortgage bonds of the Central Railroad and Banking Company issued July 1st, 1872, was duly paid in January, 1892, and default on the next semi-an-

nual interest on said bonds was made July 1st, 1892, which the trustee had the right to foreclose six months thereafter under the terms of the mortgage.

15. It is a fact that since the receivership the receivers of the Central Railroad and Banking Company of Georgia have expended betterments in its railroad lines from the income of the roads during the receivership, a sum much larger than the entire claim of the intervenors.

16. The following final decree was rendered in the Rowena M. Clarke case :

16

Final Decree.

United States Circuit Court, Eastern Division, Southern District of Georgia.

ROWENA M. CLARKE *et al.*
vs.

THE CENTRAL RAILROAD AND BANKING COMPANY OF GEORGIA. }

Come now the parties by their respective solicitors and this cause came on for a final hearing upon the pleadings, testimony and exhibits, and was *urged* by counsel; upon consideration whereof it is finally ordered, adjudged, and decreed that except as to the averments of the bill concerning the invalidity of the lease dated June 1st, 1891, from the Central Railroad and Banking Company of Georgia to the Georgia Pacific Railway Company, all rights under which were disclaimed by the answers of the Georgia Pacific Railway Company and the Richmond and Danville Railroad Company, filed herein March 24th, 1892, *in* the said bill of complaint be and the same is hereby dismissed for the want of equity; and the injunction herein granted on March 28th, 1893, restraining and prohibiting the exercise of any voting power on the forty-two thousand two hundred shares of stock in the Central Railroad and Banking Company of Georgia, set out in the bill, is hereby rescinded and vacated.

It is further ordered that the complainant, Rowena M. Clarke, and the intervenors, Francis S. Hesseltine, Rebecca M. Hesseltine, Charles H. Woodruff and A. O. Bacon, who have become co-complainants herein, be and they are hereby taxed with one-half of all the costs of this action accrued and made after March 28th, 1892.

The clerk is ordered to make such taxation and file the same in court, and the said Clarke and her said co-complainants are ordered, within ten days thereafter, to pay into court one-half of the amounts of costs so taxed by the clerk, and the other half of such taxed costs is charged against the defendants, except the said Central Trust Company of New York and the Central Railroad and Banking Company of Georgia, and day is given.

17 The question of the validity of the lease by the Central Railroad and Banking Company of Georgia to the Georgia Pacific Railway Company, as between said parties to the same and

the Richmond and Danville Railroad Company, and the Richmond and West Point Terminal Railway and Warehouse Company, is not passed upon in this decree.

In open court, June 30th, 1893.

Approved :

HOWELL E. JACKSON,
Circuit Justice.

17. The following is a copy of one of the railroad receipts for coal referred to in the interventions under the name of shipping tickets:

Shipping tickets

Richmond and Danville Railroad Company,

Lessee

The Georgia Pacific Railway Company.

DEEP GAP, ALA., 12, 21, 1891.

Forwarded in good order to Richmond and Danville Railroad Company.

Shippers will take notice that the Richmond and Danville Railroad Company will not be responsible for goods delivered at points where there is no agent, nor will it be accountable for breakage of glassware, looking-glasses, marble or crockery ware, nor for damages to the hidden contents of packages, or for leakage of liquids.

The Richmond and Danville Railroad Company will not be responsible for the transportation of goods beyond its own rails.

No freight received after 4 o'clock p. m.

18	G. P.	Articles.	Weight or measure.
		18,683	51,200
		18,738	50,900
		20,612	40,900

Consignee : H. R. Dill, sup't.

Destination : Savannah, Ga.

VA. & ALA. COAL COMPANY, *Consignor*,
Per PAYNE.

The other shipping tickets attached to said interventions are of the same tenor and effect, excepting as to the dates and amounts, as to number of cars, etc., and the name of the particular superintendent and destination ; and it is agreed that said shipping tickets need not be copied.

18. It is further agreed that the only coal companies which have brought suit against the Central Railroad and Banking Company and its receivers and the Richmond and Danville Railroad Company since the receivership under the Rowena M. Clarke bill, for coal furnished during the operation of the Central's lines by the Richmond and Danville Railroad Company, are the following-named companies, which have filed their interventions, claiming the following amounts :

The Virginia and Alabama Coal Company.....	\$26,607 44
The Sloss Iron and Steel Company.....	14,359 58
The Corona Coal and Coke Company.....	5,440 77
Little Warrior Coal Company.....	3,166 86

The first two claimants being the appellants herein, and the claims of the other two intervenors being still pending and undetermined in the court below, being for coal claimed by them to have been furnished during the same period as that supplied by appellants, and at ninety cents per ton. The amount of coal so furnished and the liability of the Central Railroad and Banking Company or its receivers for the same being in issue.

The record shows that the following-named points are situated on the following railroad lines:

19 *On Central Railroad and Lines Leased to the Central Railroad and Banking Company.*

Savannah, Atlanta, Augusta, 95-mile Post, Sebastopol, Macon, Gordon, Wadley, Waynesboro, Cameron, Troy, Ala., Brantley, Smithville, Albany, Ft. Gaines, Ft. Valley, Americus, Savannah & Atlantic R. R., Eufaula, Ala., Union Springs, Ala., Fitzpatrick, Ala., Troy.

On Savannah and Western Railroad.

Columbus, between Birmingham and Columbus, Kellyton, Cedartown, Chattanooga, Carrollton, Rome, Griffin.

Points on Port Royal and Augusta Railroad.

Port Royal.

Points on Port Royal and Western Carolina Railroad.

McCormack, Spartanburg.

Miscellaneous Private Corporations and Other Railroads not in the Central System.

Crystal Ice Company, at Columbus; Muscogee Mills, at Columbus; Ryder; Georgia Midland R. R. (railroad from Columbus to Griffin); Columbus Southern R. R. (from Columbus to Albany); Charlotte, Columbia and Augusta R. R. (from Augusta to Charlotte, S. C.).

Agreed to:

HILL, HARRIS & BIRCH,

Counsel for Appellants.

LAWTON & CUNNINGHAM,

MARION ERWIN,

Solicitors for Appellees, for Whom

They are Counsel of Record.

HENRY JACKSON,

J. R. LAMAR, *Counsel for R. & D. R. R.*

GEO. A. MERCER & SON,

Solicitors for Farmers' Loan and

Trust Company of New York.

CENTRAL TRUST COMPANY OF
NEW YORK,

By HENRY B. TOMPKINS, *Solicitor.*

20 *Lease of the Central Railroad and Banking Company of Georgia to the Georgia Pacific Railway Company.*

An indenture, made and entered into the first day of June, in the year of our Lord one thousand eight hundred and ninety-one, between the Central Railroad and Banking Company of Georgia, a corporation duly chartered and organized, hereinafter designated as the Central Company, party of the first part, and the Georgia Pacific Railway Company, a corporation duly chartered and organized, hereinafter designated as the Pacific Company, party of the second part.

Lines Owned Absolutely by the Central Company.

Whereas the Central Company owns absolutely the following lines of railroad, commonly known as the Georgia Central railroad, to wit:

1. A line from the city of Savannah to the city of Atlanta, both in the State of Georgia.
2. A line from the town of Gordon to the town of Milledgeville, both in the State of Georgia.

Lines Absolutely Controlled by the Central Company.

And whereas, the Central Company controls, by ownership of the entire capital stock, the following corporations, to wit:

1. The Montgomery and Eufaula Railway Company, owning a line of railroad which runs from the city of Montgomery, Alabama, to the city of Eufaula, Alabama.
2. The Savannah and Western Railroad Company, owning roads running from the town of Meldrim, Georgia, to the town of Lyons, Georgia; from Americus, Georgia, via Columbus, to Birmingham, Alabama; from Columbus, Georgia, to Greenville, Georgia; 21 from Griffin, Georgia, to Chattanooga, Tennessee; from Opelika, Alabama, to Roanoke, Alabama; and from Eufaula, Alabama, to Ozark, Alabama; said Savannah and Western Railroad Company also owning a majority of the capital stock of the Savannah and Ogeechee Canal Company.
3. The Savannah and Atlantic Railway Company, owning a line of railroad from the city of Savannah to Tybee island, in Chatham county, Georgia.
4. The Ocean Steamship Company of Savannah, which steamship company owns (1) the entire capital stock of the New England and Savannah Steamship Company, and (2) the entire capital stock of the Gordon Compress Company.

Lines Leased by the Central Company.

And whereas, the Central Company controls and operates under lease the following lines of railroad, to wit:

1. The Southwestern railroad, running from the city of Macon, Georgia, to Columbus, Georgia; from Fort Valley, Georgia, via Al-

bany, Georgia, to Columbia, Alabama; from Smithville, Georgia, to Eufaula, Alabama; from Cuthbert, Georgia, to Fort Gaines, Georgia; and from Fort Valley, Georgia, to Perry, Georgia, which railroad is held under perpetual lease, containing, among other things, a covenant that during the months of June and December of every year, the lessee will declare and pay to the stockholders of the said Southwestern Railroad Company dividends, which shall bear to the dividends declared and paid to its own stockholders the ratio of eight to ten, that is to say, eight dollars to each share of Southwestern Railroad stock for every ten dollars declared and paid to each share of its own stock, and that no semi-annual dividends so declared and paid to the stockholders of the Southwestern Railroad Company shall be less than at the rate of seven (7) per centum per annum on the par value of their stock: and that whenever any stock dividend or division of assets or accumulations shall be declared, paid, or made to the stockholders of the said The Central

22 Railroad and Banking Company of Georgia, a similar dividend or distribution shall be paid and made to the stockholders of the Southwestern Railroad Company in the same proportion of eight to ten, and that all such dividends and distributions of every sort shall be paid to the stockholders of the Southwestern Railroad Company at Macon and Savannah, as the said company has heretofore paid its dividends, and be free of all taxes to the stockholders.

2. The Augusta and Savannah railroad, running from the town of Millen to the city of Augusta, Georgia, which railroad is held under perpetual lease, containing, among other things, a covenant that the lessee will pay as rent for said railroad and appurtenances, the sum of thirty-six thousand five hundred dollars on the first Monday in June, and a like sum on the first Monday in December of each year.

3. The Eatonton Branch railroad, running from Milledgeville, Georgia, to Eatonton, Georgia, which railroad is held under perpetual lease, containing, among other things, a covenant that the lessee will pay an annual rental therefor of fourteen thousand dollars, payable on the first day of April of each year.

4. The Mobile and Girard railroad, running from the city of Columbus, Georgia, to the city of Troy, Alabama, and now being extended from Troy southwestward in the direction of Mobile or Pensacola, which railroad is held under a ninety-nine-year lease, containing, among other things, a covenant that the lessee will pay an annual rental of one dollar and fifty cents per share dividend upon the capital stock of said Mobile and Girard Railroad Company, payable annually on the first day of June in each year, and will also pay all taxes, and interest on the outstanding obligations of the said company now existing, or hereafter incurred, as the same may accrue.

5. The Macon and Northern Railroad Company, running from the city of Macon, Georgia, to the city of Athens, Georgia, which railroad is held under a lease for ninety-nine years, renewable thereafter, said lease containing, among other things, a covenant that

the lessee will pay as rent for said railroad and appurtenances the sum of forty-nine thousand five hundred dollars on the first day of September and a like sum on the first day of March of each year.

6. A half interest in the lease of the Georgia railroad, running from Augusta, Georgia, to Atlanta, Georgia, and having branches from Barnett to Washington, Georgia; from Camak to Warrenton, Georgia; and from Union Point to Athens, Georgia; and also controlling the Macon and Augusta railroad; said Georgia railroad having been leased on the 7th day of May, 1881, to William M. Wadley for the term of ninety-nine years, and a half interest in said lease having been assigned by the said William M. Wadley to the Central Company. Said lease assigns and sets over to the lessee the income arising from the stock in the Atlanta and West Point Railroad Company and the stock and bonds of the Port Royal and Augusta Railroad Company, owned by the Georgia Railroad and Banking Company, and from its other properties, as will more fully appear from the said lease. The said lessee, in and by said lease, covenants and agrees to pay as rental under the same the sum of six hundred thousand dollars per annum, in two semi-annual payments of three hundred thousand dollars each, on the first days of April and October of each year, the amount to be paid by the Central Company for said half interest being three hundred thousand dollars annually, in semi annual payments of one hundred and fifty thousand dollars each, to secure which payments the said Central Company has deposited with the Central Trust Company of New York stocks and bonds of the market value of five hundred thousand dollars.

Miscellaneous Property of Central Company.

And whereas, the Central Company also owns other bonds and stocks of various corporations, among which are the following, (the stocks in lines absolutely controlled being here again enumerated):

GROUP ONE.

Stocks.

Ocean Steamship Company of Savannah, (owning the entire stock of the New England and Savannah Steamship Company, \$500,000, and the Gordon Press Company, \$26,000)		\$2,000,000
Montgomery and Eufaula Railway Company..		620,000
24 Chattanooga, Rome and Columbus Railroad Company.....		2,500,000
Savannah and Western Railroad Company, (owning of the Savannah and Ogeechee Canal Company stock, \$159,200).....		3,000,700
Savannah and Atlantic Railway Company.....		250,000
Mobile and Girard railroad		816,150

GROUP TWO.

Stocks.

Western Railway Company, of Alabama.....	\$1,500,000
Port Royal and Augusta Railway Company	353,800
Port Royal and Western Carolina Railway Company, common	694,000
Port Royal and Western Carolina Railway Company, preferred	184,000
Wrightsville and Tennille Railroad Company, pre- ferred	70,000
Upson County Railroad Company	116,421
Atlanta and West Point Railroad Company... ..	188,500

Bonds.

Port Royal and Western Carolina Railway Company.	\$1,870,000
Port Royal and Augusta Railway Company, income.	1,172,000
Augusta, Gibson and Sandersville Railroad Company, income	129,300
Notes of S. J. Whiteside for Chattahoochee River boats.	40,000

GROUP THREE.

Bonds.

Central Railroad Company, consolidated first mort- gage, of which \$4,999,000 are reserved to retire tri- partite bonds.....	\$13,000,000
25 Savannah and Western Railroad Company, first mortgage	1,600,000
Mobile and Girard Railroad Company, consolidated first mortgage.....	80,000
Louisville and Wadley Railroad Company	29,000
Talbotton Railroad Company	25,000
Sylvania Railroad Company.....	33,000

Stocks.

Southwestern Railroad Company... ..	\$144,000
Savannah Cotton Exchange.....	200
Augusta Exposition Company.....	1,000
Piedmont Exposition Company	1,000
Agricultural and Mechanical Association	1,000
Macon Street Railroad Company	6,000

Miscellaneous.

1,775 acres of land, Atlanta Belt Line railroad.

Indebtedness of Central Company.

And whereas, the Central Company has liabilities as follows:

1. Four million nine hundred and ninety-nine thousand dollars

(§1,999,000) of seven per cent. tripartite first-mortgage bonds, maturing January 1st, 1893, interest payable semi-annually, on the first days of January and July of each year.

2. Four million eight hundred and eighty thousand dollars (§4,880,000) of collateral trust five per cent. bonds, maturing May 1st, 1937, interest payable semi-annually, on the first days of May and November in each year.

3. Four million six hundred thousand dollars (§4,600,000) of six per cent. certificates of indebtedness, payable at the pleasure of the company, upon due notice, at any time after July 1st, 1891, bearing interest at six per cent. per annum, payable semi-annually on the first days of July and January in each year, until the principal is paid off.

4. Thirteen million dollars (§13,000,000) of consolidated first-mortgage five per cent. bonds, maturing April 1st, 1937, interest payable semi-annually, on the first days of April and October of each year, four million nine hundred and ninety-nine thousand dollars of said bonds to be reserved in the hands of the trustee to retire an equal amount of the tripartite first-mortgage bonds, hereinbefore described, with the right, on the part of the said Central Company, to draw the remainder of said bonds from the hands of the trustee upon compliance with the conditions of the deed of trust under which said bonds are issued. These bonds have been prepared, but have not been sold.

5. A floating debt of about three million dollars, due to its own banking department, and to banks, corporations and individuals.

6. Car-trust indebtedness, falling due within four years, and amounting to about one million four hundred thousand dollars (§1,400,000), and which includes interest to maturity.

Guaranties by the Central Company.

And whereas, the Central Company has heretofore guaranteed the prompt payment of the principal and interest of the following bonds and obligations of other corporations, to wit:

1. Seven million seven hundred and fifty-five thousand dollars (§7,755,000) of the first consolidated mortgage bonds of the Savannah and Western Railroad Company, payable March 1st, 1929, with interest thereon at the rate of five per cent. per annum, payable semi-annually.

2. One million dollars (§1,000,000) of the first-mortgage bonds of the Ocean Steamship Company of Savannah, payable on the first day of July, 1920, with five per cent. interest, payable semi-annually, the said bonds being issued to retire a prior issue of one million dollars of bonds of said steamship company which bear six per cent. interest, and mature on January 1st, 1892, which prior issue was also guaranteed by said Central Company.

3. One million five hundred thousand dollars (§1,500,000) of the first-mortgage bonds of the Montgomery and Eufaula Railway Company, due July 1st, 1909, bearing interest at six per cent. per annum, payable semi-annually, and secured by a sinking

fund of fifteen thousand dollars per annum, payable to said Central Company by said Montgomery and Eufaula Railway Company.

4. Eight hundred thousand dollars (\$800,000) of the first-mortgage bonds of the Columbus and Western Railroad Company, due January 1st, 1911, bearing interest at six per cent. per annum, payable semi-annually.

5. Two hundred thousand dollars (\$200,000) of the first-mortgage bonds of the Columbus and Rome Railroad Company, due January 1st, 1914, bearing interest at six per cent. per annum, payable semi-annually.

6. Two hundred and fifty thousand dollars (\$250,000) of the first-mortgage bonds of the Savannah and Atlantic Railway Company, due March 1st, 1920, bearing interest at five per cent. per annum, payable semi-annually.

7. One hundred and twelve thousand dollars (\$112,000) of the second-mortgage bonds of the Port Royal and Augusta Railway Company, due July 1st, 1898, bearing six per cent. interest per annum, payable semi-annually, these bonds being secured by a sinking fund of six thousand dollars per annum, payable to said Central Company by said Port Royal and Augusta Railway Company.

8. One million dollars (\$1,000,000) of the first-mortgage bonds of the Mobile and Girard Railroad Company, due June 1st, 1897, whereof two hundred thousand dollars bear interest at six per cent. per annum, and eight hundred thousand dollars bear interest at four per cent. per annum, payable semi-annually.

9. Two million two hundred and forty thousand dollars (\$2,240,000) of the first-mortgage bonds of the Chattanooga, Rome and Columbus Railroad Company, due September 1st, 1937, and bearing five per cent. interest per annum, payable semi-annually.

Of these \$2,090,000 are now outstanding, and \$150,000 reserved to retire \$150,000 first-mortgage bonds of Rome and Carrollton Railroad Company, bearing six per cent. interest, maturing January 1st, 1916, and said Central Company is obligated to pay said interest and retire said bonds with the \$150,000 of bonds above provided.

10. One million five hundred and forty-three thousand dollars (\$1,543,000) of the first-mortgage bonds of the Western Railway of Alabama, due October 1st, 1918, bearing interest at the rate of four and one-half per cent. per annum payable semi-annually on the first days of April and October in each year, this guaranty being made jointly with the Georgia Railroad and Banking Company.

11. Two million two hundred thousand (\$2,200,000) dollars of the first-mortgage bonds of the Macon and Northern Railroad Company, due March 1st, 1990, bearing interest at the rate of four and one-half per cent. per annum, payable semi-annually on the first days of September and March in each year, this guaranty being made jointly with the Richmond and Danville Railroad Company.

Other Obligations.

And whereas, the Central railroad has heretofore, in the course of its business, entered into various and sundry contracts and obligations with other corporations and persons, and has assumed and incurred various and sundry liabilities which cannot be here enumerated :

And whereas, the Pacific Company is desirous of acquiring by lease for the term of ninety-nine years, the possession and control of all of said railroads and the income arising therefrom, and the income upon the stocks and bonds hereinbefore recited belonging to the said party of the first part by whatsoever title :

Now, therefore, this indenture witnesseth :

Article first. In consideration of the premises, and of the rents and covenants hereinafter reserved and contained, and on the part of the said Pacific Company, its successors and assigns, to be paid and performed, the said Central Company doth by these presents grant, demise, lease and farm let unto the said Pacific Company, its successors and assigns, all and singular the railroad lines constructed, and which are now owned wholly or in part by the said Central Company by whatsoever title the same may be owned

29 or held ; also, all railroad lines leased by said Central Company, the leases of which it may have the right to transfer, assign and set over and also the income derived from all those which it cannot thus transfer, hereby covenanting that it will appoint such persons, officers and agents to operate said last-named lines as said Pacific Company may select, and will operate them in such manner, not inconsistent with the terms of such leases, as said Pacific Company, its successors and assigns, shall determine ; and also the lands, tenements, hereditaments, ways and rights of way, now owned, held, or possessed by the said Central Company for said railroads, and for any and all purposes in connection with the construction, working, maintenance and operation of the same, or any or all of them, and all the easements and appurtenances thereunto belonging or in anywise appertaining, and also the right to use the same, or any part thereof, and also all branches, extensions, sidings, tracks, bridges, depots, fences, stations, section-houses, tanks, warehouses, cotton presses, freight-houses, engine-houses, car and machine shops, and all other buildings, fixtures and improvements of whatever kind and description and wherever situated, now owned or held by the said Central Company for the use of said railroads, or in connection with the working, maintenance and operation of the same ; also all locomotives, tenders, stationary engines, cars, trucks, push-cars, hand cars, and all other rolling stock and implements, and all the tools and implements, machinery, fuel, materials and supplies now owned or held or possessed by said Central Company for use in connection with the said railroads, or any of them, or in connection with the working, maintenance and operation of the same ; and also all real estate, or other personal property where-soever the same may be situated, now belonging to said Central

Company, or now owned, held or possessed for use in connection with said railroads, or in connection with the maintenance or operation of the same, together with the rents, issues and profits hereby demised, and each and every part thereof, including therein all revenues arising from the lines of said Central railroad heretofore described herein, and does hereby assign and set over all the income and profits arising from the stocks and bonds hereinbefore recited, now belonging to said Central Company, but expressly excluding herefrom its bank and banking-house and furniture and the assets of said banking business as shown on its books of
30 account on the day fixed for this lease to go into effect, and any and all rights to exercise and maintain banking privileges heretofore granted to and now owned and held by said Central Company.

To have and to hold all of said railroads, premises, property and appurtenances unto the said Pacific Company, its successors and assigns, for its and their own *own* proper use and benefit from the first day of June, one thousand eight hundred and ninety-one, for the term of ninety-nine years, thence next ensuing. And the Pacific Company, its successors and assigns, during the said term, shall have the sole and exclusive right, power and authority to hold, occupy, use, enjoy, control, manage and operate the same, and to regulate, fix, vary, demand, collect, receive and dispose of all and every the rates, tolls, revenues and charges to accrue thereon or therefrom; subject, however, to the lien of all mortgages heretofore made by the said Central Company, or for the payment of which the said Central Company may be liable and subject, or by which its property may be encumbered; also to all the valid covenants and agreements contained in contracts which may heretofore have been made by the said Central Company concerning the same, which said covenants and agreements said Pacific Company, its successors and assigns, stipulates to observe and perform; the said Pacific Company, its successors or assigns, yielding and paying therefor to the said Central Company, its successors and assigns, at the times and in the manner hereinafter provided, the yearly rents hereinafter specified, and keeping and performing all and singular the covenants hereinafter set forth to be kept and performed by the said Pacific Company.

Article second. The said Central Company does hereby assign and transfer unto the said Pacific Company and its assigns, for and during the term of this lease, the income arising from any and all of the stocks now owned or held by it, hereinbefore described in groups one, two and three; provided, nevertheless, that any stock dividend, or extraordinary dividend, shall be and remain the property of the Central Company; but the income therefrom, or from the investment thereof, shall be thereafter paid to the Pacific Company as herein provided for other income.

Article third. The said Central Company does hereby assign and transfer unto the said Pacific Company and its assigns, for and during the term of this lease, the income arising from any
31 and all of the bonds now owned and held by it, hereinbefore

described in groups one, two and three; and also the income from the promissory notes of Samuel J. Whiteside, given in payment for Chattahoochee River boats.

And if any of the said bonds, or said notes now held by the said Central Company, shall become due and be paid during the continuance of the lease, then and in that event the said moneys arising from said bonds or notes shall be invested in other securities, as hereinafter provided, which shall be held by said Central Company in the same manner, and take the place of and be subject to the same obligations as the bonds or notes were originally held, save that the said Central Company shall only be held and have to pay to said Pacific Company, its successors and assigns, the interest it shall receive on said reinvestment of said proceeds.

Article fourth. It is further covenanted and agreed that all of the aforesaid stocks and bonds shall remain in the custody, care and control of the said Central Company, which company shall collect all dividends, interest and income arising therefrom, and pay the same over to said Pacific Company, its successors or assigns, as is herein provided. But it is expressly covenanted that no part or portion of said stocks or bonds shall be disposed of by the said Central Company unless so directed by resolution of the board of directors of the said Pacific Company, its successors or assigns. It is further covenanted and agreed that any of the bonds, stocks, securities or other property other than the railroad and appurtenances of the said Central Company, may be sold during the continuance of this lease for the purpose of reinvestment, upon such terms and for such prices as may be mutually agreed upon by the said Central Company and the said Pacific Company, its successors or assigns, the proceeds of such sale to be reinvested in such other securities or property as shall be in like manner mutually agreed upon by said Central Company and said Pacific Company, its successors or assigns; and said securities or property so purchased shall stand in lieu of the securities or property sold, after said reinvestment, and the interest, dividend, rent or other income derived therefrom shall belong to and be received by the said Pacific Company, its successors or assigns, in the same manner as the interest, dividend or other income derived from the securities or property so sold did
32 belong to or was received by said Pacific Company, its successors or assigns, under the provisions of this lease, and shall be subject in all respects to the same provisions as to custody, use, sale or other disposition provided for under this lease in respect to the securities or property of which it is the reinvestment.

Article fifth. And said Central Company further covenants and agrees that it will cast its vote at all meetings and at all elections for directors and officers of any and all of the companies aforesaid, in which it has any interest, in such manner, and for such person or persons as officers and directors, as the Pacific Company, its successors or assigns, may direct it to do, or at the option of the said Pacific Company, its successors or assigns, said Central Company will give to such person or persons as said Pacific Company, its successors or assigns, may from time to time designate, such necessary

power or powers of attorney to vote all stocks and bonds held by the party of the first part, including bonds issued in renewal, in the various corporations and companies, as fully as the said party of the first part could vote the same if this agreement had not been made; but such powers of attorney shall be so restricted as not to permit any liens or incumbrances to be put upon the property of said corporations in addition to those now existing, except by consent of the said Central Company.

Article sixth. The said Central Company further covenants and agrees that it, or its successors, shall and will during the said term of ninety-nine years, preserve or renew and maintain its corporate existence and organization, and at all times during the said period, on demand of the said Pacific Company, its successors or assigns, shall and will exercise and put in force each and every corporate power and franchise, and do each and every corporate act necessary or desirable to carry out the provisions of this agreement, and to enable the said party of the second part to avail itself of and use, exercise and enjoy the rights, powers, and privileges hereby granted in respect to the said railways and other property aforesaid, and shall, and will, at any time or times, on demand, execute, acknowledge, and deliver to the said Pacific Company, its successors or assigns, such other and further instruments in writing, and under its corporate seal, as may be necessary or desirable, better and more effectually to secure the purpose of this indenture.

33 Article seventh. The said Central Company further covenants and agrees to and with the said Pacific Company, its successors or assigns, that it will not hereafter, during the said period of ninety-nine years, enter into any contract, incur any debt or liability, or make or issue any bond or bonds, or obligation or obligations, or any deeds of trust, mortgages, or other security whatever, which shall in anywise be a lien on the property hereby demised, except with the consent of the said Pacific Company, its successors or assigns, or except in renewal of its present indebtedness, bonded or otherwise.

Article eighth. It is further stipulated and agreed that the said Central Company may, with the assent first had and obtained of the said Pacific Company, its successors or assigns, purchase, lease, build, or extend, upon such terms as may be mutually agreed upon or consented to by said Pacific Company, its successors or assigns, the line of any railway, or may purchase, or otherwise acquire, the controlling interest in the stock of any line of railway which may form an extension, either of its own line or the lines in which it may own a majority of the capital stock, or the lines which it may hold under lease; and the charges thereby incurred by the said Central Company by either the payment of rental, the issue of bonds, or by guaranteeing a dividend on the stock, or the interest upon the bonds which may have theretofore been issued by the corporation owning the line so purchased or otherwise acquired or controlled, shall be deemed a fixed charge on the property of the Central Company, as set forth in article tenth of this agreement.

Article ninth. Whenever the said Pacific Company, or its suc-

cessors or assigns, shall in writing demand of the said Central Company that betterments shall be made to the property hereby demised or acquired under the term of this lease, or for additional equipment to operate the same, and the said Central Company shall agree that said betterments should be made, or that such additional equipment is necessary, the moneys necessary to pay for the same shall be provided by the said Central Company by the sale of such bonds as it may have on hand unissued, or other bonds or securities of which it may be the owner, except such as may be held for the control of any of the lines hereinbefore mentioned, or hereafter acquired, or by such new issue of bonds, debentures, notes or other securities as said Central Company by its charter, is now, or may hereafter

34 be authorized to issue, the proceeds whereof shall be applied only to the providing of the equipment or betterments aforesaid, and the same may be sold from time to time, as may be necessary, for the payment therefor; but none of such bonds or other securities shall be sold except for such prices as may be mutually agreed upon by said companies; and when said bonds or other securities are so issued and sold, the interest upon the same shall then and thereafter be included in the guaranty made by said Pacific Company as set forth in article tenth of this agreement.

In case said companies shall disagree whether or not the betterments or the additional equipment hereinbefore referred to are requisite and necessary or the price at which said bonds or securities should be sold, the differences shall be decided by arbitration as hereinafter provided.

Article tenth. In consideration of the premises, the Pacific Company, for itself, its successors and assigns, hereby covenants and agrees that it will pay to the Central Company as rental the following sums during the existence of this lease:

(1.) The rental on all roads now leased, or which may hereafter be leased by said Central Company with the consent of said Pacific Company, its successors or assigns, at the times and according to the terms provided in said leases, including the payment of such dividends and fixed charges as may be therein guaranteed.

(2.) The interest on the certificates of indebtedness, and on all the bonded and other indebtedness, of said Central Company now existing or hereafter created by and with the consent of the said Pacific Company, its successors or assigns, except such debts as have been or may hereafter be incurred by said Central Company in the conduct of its banking business.

(3.) Any part of the interest on the bonds of other corporations guaranteed by said Central Company which by the terms of said guaranties, or any of them, said Central Company may be called upon to pay, but the said Pacific Company, its successors or assigns, shall thereupon be subrogated to all of the rights of the Central Company as against the defaulting companies in respect to said sums of money so paid.

35 (4.) The sum of five hundred and twenty-five thousand dollars per *per* annum, being an amount equal to seven per centum per annum upon the capital stock of said Central Company,

now aggregating \$7,500,000, to wit: \$262,500, being three and one-half per cent., payable on or before the 20th day of December of each and every year during the term of this lease, and a like amount on or before the 20th day of June of each and every year during the term of this lease; said rental to be independent of, and in addition to, any dividends to be declared by said Central Company from the earnings of its banking operations.

Article eleventh. The said Central Company stipulates and agrees that it will, from time to time, renew and fund the principal, when it shall be able so to do, of all the indebtedness which it now owes or which it may hereafter incur during the period of this lease, on such terms and at such rate of interest as may be agreed upon by it and the said Pacific Company, its successors or assigns, and will use whatever rights and powers it may be able, through its leases of other roads, or by the ownership of stock or bonds of other roads, to cause said roads to fund the principal of their indebtedness upon such terms and rates of interest as may be agreed upon by it and the said Pacific Company, its successors or assigns.

Article twelfth. Said Central Company further stipulates and agrees that it will, at the request and on the demand of the said Pacific Company, its successors or assigns, exercise any power that it may possess to call in, and pay off, by renewing or funding at lower rates of interest, any of its bonds, certificates of indebtedness or other obligations.

Article thirteenth. The said Pacific Company, its successors or assigns, will, at its own cost, risk and expense, during the term of this lease, keep, preserve and maintain the said railroad and leased lines in good working condition and repair, so as to be suitable for the transaction of all business which can be reasonably done thereon, and will in like manner, maintain and preserve all necessary side tracks and station-houses; all the fixtures, appurtenances, tools and machinery pertaining to said railroads, and all the property essentially connected therewith, hereby leased, and will, in like manner, at all times during the continuance of this lease, maintain,
36 renew and preserve all the rolling stock and equipment hereby leased, in good condition and repair, and when worn out or destroyed, replace the same with new of equal aggregate value, and all the property substituted for, and added to that which is hereby leased, rented and farmed out, shall be the property of the Central Company to the same extent as the original property for which it may be substituted, or to which it may be added, was the property of the Central Company. All rolling stock received by the Pacific Company, its successors or assigns, from the Central Company, and all rolling stock purchased under the terms of this lease with funds of the Central Company, and all other rolling stock bought to replace worn-out or damaged stock, and all other rolling stock held by the lessee under the terms hereof, shall be plainly marked with the name of the Central Company, in general conformity to the style of marking now in use by the Central Company, or in such other manner as the Central Company may from time to time prescribe.

Article fourteenth. As part of the rental aforesaid and in addition thereto, the said Pacific Company, its successors or assigns, will pay annually to the said Central Company the sum of fifteen thousand dollars, in quarterly installments, for corporate maintenance of said Central Company, including therein salaries of its officers and counsel.

Article fifteenth. The said Pacific Company, its successors or assigns, hereby covenants and agrees that the directors and principal officers of the Central Company shall have the right to free transportation upon the lines controlled under this lease, and that the said Central Company shall at least once in each year, by a committee appointed by its board of directors, have a right to inspect the said property, and at all times, during the continuance of this lease, have like right to examine and inspect any and all the property hereby demised, and the same shall at all times be open to the inspection of the president of the Central Company, and such person or persons as he may appoint or designate in writing.

Article sixteenth. The said Pacific Company, its successors or assigns, will, at its own cost, risk and expense, provide for the defense of all suits at law or in equity, now pending against said Central

37 Company, its leased or operated lines, and will pay off any and all damages that may be assessed against the said Central Company, its leased or operated lines, and will assume the defense of and pay all damages that may accrue on account of any rights of action that may have arisen against said Central Company, its leased or operated lines, before the date of this lease, but the amounts so paid for such damages shall be refunded to the Pacific Company by said Central Company as a part of its floating indebtedness, for which provision is made in the next article.

The said Pacific Company, its successors or assigns, shall assume and settle all running accounts of operation, salaries, wages, supplies, car mileage, freight and ticket balances that may be in existence when the property hereby demised is turned over, and shall receive all balances arising on such accounts or due by agents or other transportation lines, at that time, to the said Central Company, its leased and operated lines; the intention being that the said Pacific Company, its successors or assigns, shall take possession of said leased property as a running road, providing for its current and other expenses and receiving such cash and credits as may be then due and payable for current operations.

Article seventeenth. It is hereby further stipulated and agreed that, for the purpose of retiring the car-trust and floating indebtedness of the said Central Company, and of the steamship companies, and the lines hereby leased, or controlled under this lease; and for the purpose of buying steel rails for making such immediate renewals as the parties hereto may agree to be necessary; for the purchase of additional rolling stock; and to pay for such betterments as are actual additions to the properties acquired under this lease, the said Central Company may, from time to time, with the consent, and shall, upon the demand of said Pacific Company, its successors or assigns, sell such of the bonds and securities hereinbefore set forth and described in group three, as may be agreed upon. Such

sales shall be made at prices to be agreed on by said companies, the fixed charges, if any, resulting from the sale of said securities being borne by said Pacific Company, its successors or assigns. Should said Central Company at any time refuse to sell any of said securities so demanded for the purposes hereinbefore specified, then and in that event said Pacific Company, its successors or assigns, shall be

38 entitled to the possession of said demanded securities, to be used in its discretion as collateral for moneys borrowed for the purposes aforesaid, and said Pacific Company, its successors or assigns, may sell all, or any part of the said securities, at such price as may be mutually agreed upon, or fixed by arbitration, in the event of disagreement, and may apply the proceeds thereof to the purposes aforesaid, accounting to the said Central Company for the disposal thereof.

Article eighteenth. The Central Company shall complete its existing contract for the extension of the Mobile and Girard railroad, southwest from Troy, and the bonds it shall be entitled to receive in payment thereof shall be sold upon the demand of the Pacific Company, its successors or assigns, for such price as may be agreed upon, to pay off and discharge the floating indebtedness incurred in building and equipping such extension; and the said Central Company may guaranty the Mobile and Girard Railroad bonds, in which event the interest upon said bonds shall be paid by said Pacific Company, its successors or assigns.

Article nineteenth. It is hereby mutually covenanted and agreed, that the said Pacific Company, its successors or assigns, shall possess and exercise, with the express approval of the board of directors of said Central Company, first had and obtained, all the rights, powers and privileges now possessed or exercised by said Central Company in respect to selling, leasing or otherwise disposing of worn-out, unserviceable or unnecessary rolling stock and equipment, and other properties, real or personal, hereby demised, so far as such powers may be exercised in conformity with the provisions of the mortgages and leases heretofore executed by or to said Central Company, and the said Central Company hereby covenants and agrees that it shall and will, at the request of the said Pacific Company, its successors or assigns, from time to time during the period of this lease, take such action as may be necessary or desirable to secure the consent and approval of the trustees under such mortgages, for the purpose of selling or disposing of such property.

Article twentieth. The said Pacific Company, for itself, its successors or assigns, further covenants and agrees to pay and discharge all expenses, costs, damages, claims and demands whatsoever, which shall or may arise out of the management and operation of said
39 railroads and other properties hereby demised, or any part thereof, and will and shall at all times save and keep harmless and indemnify the said Central Company therefrom, and will defend at its own expense all such actions and suits which shall or may be brought against the said Central Company; and will pay as operating expenses all taxes and assessments, ordinary or extraordinary, of whatsoever kind and nature, which may be lawfully levied or assessed upon the property hereby demised, including said

leased lines or any of them, or against the said Central Company, because of its interest therein.

Article twenty-first. At the termination of this lease, from whatsoever cause, the Pacific Company, its successors or assigns, shall and will surrender to the said Central Company, the said railroads and other property hereby demised, assigned or transferred, except such as shall have been sold, abandoned or disposed of as hereinbefore provided, in at least as good order and condition as when received, and with such additions, betterments or improvements as shall have been made thereto, but no allowance shall be made by said Central Company for betterments placed upon any of the properties held hereunder.

A schedule of the rolling stock, equipment and personal property hereby demised, assigned and transferred, shall be made and delivered to each of said companies within sixty days from the date hereof.

Article twenty-second. The Pacific Company, its successors and assigns, shall keep the wharves, warehouses and compresses belonging to the steamship and compress companies controlled under this lease, in good repair and reasonably insured against fire, the insurance policies being taken in the name of the companies owning such compresses and wharves, and deposited with the Central Company, but the premiums thereupon being paid by the Pacific Company, its successors or assigns. In case of failure of the Pacific Company, its successors or assigns, to so insure, the Central Company shall be at liberty to take out the necessary policies and to collect from the Pacific Company, its successors or assigns, the amount paid in premiums.

The Pacific Company further covenants that it will keep in good repair and seaworthy condition the steamships now in the
40 service of the steamship companies herein mentioned, and replace such as may be worn out by use or destroyed by accident or otherwise, upon the same terms and conditions, and to the same extent as is applicable to the present equipment of the Central Company, as provided in article 13 of this agreement.

The Central Company further covenants that in case it shall be determined the exigencies of business require additional steamships, they shall be supplied, and payment for the same provided by the Central Company upon like terms and conditions as are applicable under this lease to betterments and additional equipment, as specified in article 9th of this agreement.

Article twenty-third. In case the said Pacific Company, its successors or assigns, shall at any time hereafter during the existence of this lease, fail to pay the sums hereinbefore provided to be paid by the Pacific Company, its successors or assigns, or any part thereof, when the same shall have become payable according to the terms hereof, and such default shall continue for the period of sixty days, or shall fail properly to maintain said railways, or either of them, in good and sufficient condition, or to maintain and renew their rolling stock and equipment, as hereinbefore provided, or to perform any other covenant herein, and in case such default or failure shall continue for the period of sixty days, after due notice in writing of

such default, then, and in every such case, it shall be lawful for the said Central Company, its successors or assigns, at its option, to enter, without process of law, into and upon the said railways and other property hereby demised, assigned or transferred, and every part thereof, and to have and to hold all such property, together with all the additions and improvements which shall have been made to the same, and all the right, title and interest whatever of the said Pacific Company, its successors or assigns, in and to the said property, or any part thereof, shall thereupon wholly cease and determine.

And it is further agreed that such re-entry shall not waive or prejudice any claim or right of the said Central Company to or for damages, against the said Pacific Company, its successors or assigns, on account of such non-payment, or on account of any non-performance or breach of the terms of this indenture.

41 Article twenty-fourth. As additional security for the due and faithful performance by the Pacific Company, its successors or assigns, of all the covenants contained in this lease, the said Pacific Company, its successors or assigns, covenant to deposit with the Central Company, at or before the sealing and delivery of these presents, two bonds, each in the sum of \$500,000, properly guaranteed in a manner acceptable to the Central Company, to be held as security for the payment of any loss, injury, or damage, which may accrue to the Central Company by reason of a breach of any of the covenants herein contained. The deposit so made may be at any time changed by the mutual consent of the parties hereto.

Article twenty-fifth. It is further covenanted and agreed that this lease can only be assigned by the said Pacific Company by and with the assent of the said Central Company. Upon the substitution, with the assent of said Central Company, of any other party in the place of the said Pacific Company, all liability of the said Pacific Company hereunder shall cease and determine.

Article twenty-sixth. It is further understood and agreed that all differences arising at any time during the period of this lease, as to the due performance by either of the parties hereto of any of the covenants herein contained, not involving abrogation of this lease, shall be submitted to three arbitrators, one of whom shall be chosen by the Central Company, one by the Pacific Company, its successors or assigns, and the two so chosen shall choose the third; and the award of these arbitrators, or any two of them, shall be binding and conclusive upon the parties hereto; but any differences arising as aforesaid shall not interrupt the business of the said railways, but such business shall continue as before, until the question in dispute shall have been settled by the arbitrators as aforesaid, and thereupon such payments or restitution shall be made, and such acts and things shall be done as may be required by the award of said arbitrators.

Either of the parties hereto, desiring a submission to arbitration of any matter concerning the stipulations and provisions of this indenture, shall notify the other party in writing of the matter which it desires to submit to arbitration; within five days thereafter the party thus notified shall name its arbitrator and notify the other

42 party of such selection, whereupon the party demanding the arbitration shall, within five days after the receipt of such notification, select and name its arbitrator and notify the other party thereof, and the arbitrators thus selected shall immediately proceed to select the third arbitrator as aforesaid, and with him to consider and determine the matter submitted.

In case either party shall fail, upon due notification, to name an arbitrator who will act, the arbitrator selected by the other shall have the right alone to proceed and determine the matters thus submitted, and his award shall be final and conclusive upon the parties hereto.

In case any one of the arbitrators selected as above shall fail or refuse to perform the duties required of him with reasonable dispatch, then the other two arbitrators shall have all the powers otherwise vested in the three, and in case any two or more of the said arbitrators should fail to discharge the duties required of them with reasonable dispatch, then, upon notification of either of the parties hereto to the other party, the difference shall be submitted to other arbitrators selected as hereinbefore provided.

In witness whereof, the Central Railroad and Banking Company of Georgia, and the Georgia Pacific Railway Company, have hereunto appended their corporate seals and their signatures in duplicate, by the hands of their respective presidents, and countersigned and attested by their respective cashier and secretary, the day and year aforesaid.

43

Signed, sealed and delivered
by the Central Railroad and
Banking Company of Georgia,
in the presence of

H. D. HOLLOWAY,
CHAS. EDGAR MILLS,
*Commissioner for Georgia
in New York.*

Chas. Edgar C. R. R. &
Mills, B'k'g Co.
a Comm'r Seal.
for Georgia.

THE CENTRAL RAIL-
ROAD AND BANKING
COMPANY OF GEOR-
GIA,

By E. P. ALEXANDER,
President.

Attest:
T. M. CUNNINGHAM,
Cashier.

Signed, sealed and delivered
by the Georgia Pacific Railway
Company, in the presence of

H. D. HOLLOWAY,
CHAS. EDGAR MILLS,
*Commissioner for Georgia
in New York.*

Chas. Edgar The Georgia
Mills, Pacific
a Comm'r Railw'y Co.
for Georgia. Seal.

THE GEORGIA PACIFIC
RAILWAY COMPANY,
By JOS. BRYAN, *President.*

Attest:
A. J. RAUH, *Secretary.*

44 STATE OF NEW YORK, }
 City and County of New York, } ss:

This is to certify that I, Charles Edgar Mills, a duly qualified commissioner of deeds for the State of Georgia, residing in the city, county and State of New York, did see the above-mentioned E. P. Alexander, as president, and T. M. Cunningham, as cashier, of the Central Railroad and Banking Company of Georgia, sign the above instrument of writing, and heard them acknowledge that they executed the same for the uses and purposes therein expressed, and that I and the said H. D. Holloway did attest said instrument as subscribing witnesses in the presence of said E. P. Alexander, as president, and T. M. Cunningham, as cashier, etc., and of each other, and the corporate seal of said corporation thereto affixed by them in our presence on this 4th day of June, A. D. 1891, in due form of law.

In witness whereof, I have hereunto set my hand and affixed my official seal, this fourth day of June, A. D. 1891.

CHARLES EDGAR MILLS,
Commissioner for Georgia in New York,
 115 and 117 Broadway, New York City.

STATE OF NEW YORK, }
 City and County of New York, } ss:

This is to certify that I, Charles Edgar Mills, a duly qualified commissioner of deeds for the State of Georgia, residing in the city, county and State of New York, did see the above-mentioned Joseph Bryan, as president, and A. J. Rauh, as secretary of the Georgia Pacific Railway Company, sign the above instrument of writing, and heard them acknowledge that they executed the same for the uses and purposes therein expressed, and that I and the said H. D.

45 Holloway did attest said instrument as subscribing witnesses in the presence of said Joseph Bryan, as president, and A. J. Rauh, as secretary, etc., and of each other, and the corporate seal of said corporation thereto affixed by them in our presence on this 4th day of June, A. D. 1891, in due form of law.

In witness whereof I have hereunto set my hand and affixed my official seal this fourth day of June, 1891.

CHARLES EDGAR MILLS,
Commissioner for Georgia in New York,
 115 and 117 Broadway, New York City.

In Circuit Court of United States for Eastern Division of Southern District of Georgia.

MRS. ROWENA M. CLARKE

vs.

THE CENTRAL RAILROAD AND BANKING COMPANY OF GEORGIA
et al.

To the honorable judges of the circuit court of the United States for the eastern division of the southern district of Georgia:

The Virginia and Alabama Coal Company, a corporation incorporated under the laws of Alabama, and being a citizen of that State, and having its principal place of doing business at Patton, in the State of Alabama, in pursuance of the order of this honorable court granted in the above cause on the 12th day of April, 1892, brings this intervening petition *pro inter esse suo* against the Central Railroad and Banking Company of Georgia, a corporation incorporated under the laws of Georgia, and having its principal place of doing business at Savannah, Georgia, in said eastern division of the southern district of Georgia, and against H. M. Comer, Joseph Hull, E. P. Howell, James Swann, J. K. Garnett, A. Vetsburg, C. H. Phinizy, H. T. Inman, George J. Mills, Henry R. Jackson and U. B. Harrold, as receivers of the said Central Railroad and Banking Company of Georgia, and also against the Richmond and Danville Railroad Company, a corporation incorporated under the laws of the State of Virginia.

And thereupon intervenor shows to the court that the said Richmond and Danville Railroad Company, while operating the said Central Railroad and Banking Company of Georgia, purchased from intervenor for the use and benefit of the said Central Railroad and Banking Company, in its several divisions, coal, which purchase was made in pursuance of the contract of said Richmond and Danville Railroad Company, dated July 13th, 1891, a copy of which is hereto annexed as Exhibit A, and to which leave of reference is prayed. For coal furnished under said contract and actually delivered to said Central Railroad and Banking Company (against which latter company in the course of said business the bills were originally made out), and used by said Central Railroad and Banking Company in the running of its machinery, the said defendants against whom this intervention is brought are indebted in the sum of twenty-six thousand six hundred and seven dollars and forty-four cents (\$26,607.44), as shown by a statement of account hereto annexed and marked Exhibit B, and to which leave of reference is prayed, and which said amount is due and unpaid.

In pursuance of said contract, intervenor delivered to H. R. Dill, at Savannah, superintendent of the Savannah division of the said Central Railroad and Banking Company, between the dates of September 16, 1891, and March 4, 1892, coal to the amount of \$12,823.93, as shown upon an itemized bill of particulars hereto annexed and marked Exhibit C; attached to said exhibit are the shipping tickets, showing the shipment of the cars of coal scheduled in said exhibit.

In like manner, intervenor shipped and delivered to D. D. Curran, superintendent of the Southwestern division of said Central Railroad and Banking Company, coal to the amount of \$10,022.48, at Columbus, Georgia, at the dates and in the quantities by car-loads, which are shown upon the bill of particulars hereto attached and marked Exhibit D, and to which leave of reference is prayed, and to which also the shipping tickets are attached. In like manner intervenor shipped and delivered to B. C. Epperson, superintendent of the South Carolina division of said Central Railroad and Banking Company, at Augusta, Georgia, coal amounting to \$3,761.03, as per bill of particulars hereto annexed, showing the dates and the quantities in car-loads delivered on such dates, with the shipping tickets attached, and which bill of particulars is marked Exhibit E, and to which leave of reference is prayed.

Intervenor submits that the said Richmond and Danville Railroad Company is liable to it for the said sum of \$26,607.44, under its said contract of purchase, and that the said Central Railroad and Banking Company of Georgia is also liable to intervenor because the said coal was bought and actually used for the benefit of the Central Railroad and Banking Company of Georgia in the operation of its machinery and the prosecution of its business. Intervenor submits that it is entitled to a decree against said defendants, both severally and jointly, and that any equities which may exist between them ought not to delay this intervenor in obtaining such decree.

Wherefore, intervenor waiving discovery from each of said defendants, prays:

1. That intervenor be made a party complainant to the cause and that this intervention be allowed.
2. That the court decree that the said defendants are jointly and severally liable to intervenor, for said sum of \$26,607.44, and that they be decreed to pay said sum, besides interest, to intervenor.
3. That this intervening petition and the exhibits (except the shipping tickets attached to the same) be served on the defendants in the manner prescribed by the orders of the court in this cause.
4. Such other and further relief as the case may require.

HILL, HARRIS & BIRCH,

Solicitors for Intervenor.

SOUTHERN DISTRICT OF GEORGIA, }
Western Division. }

You, Walter B. Hill, attorney for the intervenor, do swear that what is contained in the foregoing petition is true, of your own knowledge, so far — it relates to your own act and deed and so far as it relates to the act and deed of any other person, you believe it to be true.

WALTER B. HILL.

Sworn to and subscribed by me, this May 26, 1892.

CÉCIL MORGAN,
Deputy Clerk.

EXHIBIT "A."

Richmond & Danville Railroad Company.

Office general purchasing agent, Atlanta, Ga.

Joseph P. Minetree, general purchasing agent.

The Virginia & Alabama Coal Co.—Mr. J. R. Ryan, V. P. & G. M., Birmingham, Ala.

DEAR SIR: We beg to accept your verbal offer of today to furnish the C. R. R. & B. Co. of Ga. with say 275,000 tons of best quality engine steam coal for the next twelve months, commencing July 1, 1891, and ending July 1, 1892, at 90 cents per ton of 2,000 lbs., to be delivered on cars at mines, and to be shipped at times and in quantities to suit. Settlements for the coal delivered in any one month to be made on or about the first of the second succeeding month; and the C. R. R. & B. Co. of Ga. reserves the right to
 49 increase or decrease the monthly deliveries upon reasonable notice at any time. The division superintendents of the divisions for which the coal will be required will communicate with you as to the monthly deliveries, and all bills for coal furnished under this contract to be sent direct to the division superintendents. Kindly confirm this at once and oblige,

Yours truly,

(Signed)

JOSEPH P. MINETREE,
General Purchasing Agent.

July 13, 1891.

EXHIBIT "B."

PATTON, ALA., *March 4, 1892.*

Central Railroad of Georgia in account with Virginia and Alabama Coal Company, miners and shippers of domestic and steam coal.

1892.

March 4. To balance due for coal shipped to D. D. Curran, superintendent.....	\$10,022 48
March 4. To balance due for coal shipped to H. R. Dill, superintendent.....	12,823 93
March 4. To balance due for coal shipped to B. C. Epperson, superintendent.....	3,761 03

Total balance due March 4, 1892..... \$26,607 44

Seven per cent. interest from March 4, 1892, to be added.

50

EXHIBIT "C."

PATTON, ALA., March 14, 1892.

Central Railroad of Georgia in account with Virginia and Alabama Coal Company, miners and shippers of domestic and steam coal.

For coal shipped to H. P. Dill, sup't.

1892.	Forwarded.....	\$12,449 30
March 1.	To inv. rend. 5 cars coal, 229,000 lbs., at 90c...	103 05
1.	" " 2 " " 91,300 " " ..	41 09
2.	" " 1 " " 43,400 " " ..	19 53
3.	" " 5 " " 233,000 " " ..	104 85
3.	" " 5 " " 235,800 " " ..	106 11
		<hr/>
		\$374 63

Total amount due to March 4, 1892... \$12,823 93

PATTON, ALA., March 4, 1892.

Central Railroad of Georgia in account with Virginia and Alabama Coal Company, miners and shippers of domestic and steam coal.

For coal shipped to H. R. Dill, sup't.

1892.	Forwarded....	\$7,611 37
Feb. 17.	To inv. rend. 5 cars coal 224,300 lbs. at 90c...	100 94
17.	" " 5 " " 234,300 " " ..	105 44
17.	" " 7 " " 313,700 " " ..	141 17
18.	" " 7 " " 319,000 " " ..	143 55
18.	" " 5 " " 229,000 " " ..	103 05
19.	" " 5 " " 224,200 " " ..	100 89
19.	" " 7 " " 307,600 " " ..	138 42
19.	" " 5 " " 227,800 " " ..	102 51
20.	" " 5 " " 212,100 " " ..	95 45
20.	" " 7 " " 297,600 " " ..	133 92
22.	" " 5 " " 255,200 " " ..	114 84
23.	" " 3 " " 152,700 " " ..	68 72
24.	" " 7 " " 355,200 " " ..	159 84
24.	" " 5 " " 238,400 " " ..	107 28

51

Feb. 25.	To inv. rend. 9 cars coal 404,200 lbs. at 90c...	\$181 89
25.	" " 8 " " 393,900 " " ..	177 26
26.	" " 12 " " 593,900 " " ..	267 26
26.	" " 12 " " 578,400 " " ..	260 28
27.	" " 8 " " 375,000 " " ..	168 75
27.	" " 11 " " 536,700 " " ..	241 52
29.	" " 13 " " 620,000 " " ..	279 00
29.	" " 12 " " 586,700 " " ..	264 02
23.	" " 6 " " 273,900 " " ..	123 26
23.	" " 6 " " 273,900 " " ..	120 92

Feb. 23.	To inv. rend.	5 cars coal	239,200 lbs. at 90c...	\$107 64
23.	"	" 6 " "	290,400 " " ..	130 68
24.	"	" 7 " "	318,500 " " ..	143 33
24.	"	" 2 " "	87,500 " " ..	39 38
25.	"	" 7 " "	336,600 " " ..	151 47
25.	"	" 2 " "	88,400 " " ..	39 78
26.	"	" 8 " "	377,700 " " ..	169 97
27.	"	" 11 " "	479,400 " " ..	215 73
29.	"	" 7 " "	310,600 " " ..	139 77

\$4,837 93

Forward \$12,449 30

PATTON, ALA., March 4, 1892.

Central Railroad of Georgia in account with Virginia & Alabama Coal Company, miners and shippers of domestic and steam coal.

For coal shipped to H. R. Dill, sup't.

1892.	Forward	.....	\$4,999 67
Jan. 21.	To inv. rend.	4 cars coal 202,700 lbs. at 90c...	91 22
21.	"	" 4 " " 193,600 " " ..	87 12
22.	"	" 4 " " 192,600 " " ..	86 67
22.	"	" 5 " " 252,300 " " ..	113 54
23.	"	" 3 " " 151,900 " " ..	68 36
23.	"	" 3 " " 151,800 " " ..	68 31
25.	"	" 4 " " 202,500 " " ..	91 13

52

Jan.	25.	"	"	3 cars coal	152,000	"	"	..	68	40
	26.	"	"	5 "	242,700	"	"	..	109	22
	26.	"	"	6 "	306,700	"	"	..	138	02
	27.	"	"	5 "	242,500	"	"	..	109	13
	27.	"	"	5 "	235,600	"	"	..	106	02
	28.	"	"	2 "	101,500	"	"	..	45	68
	28.	"	"	2 "	101,400	"	"	..	45	63
	29.	"	"	4 "	191,700	"	"	..	86	27
	29.	"	"	4 "	192,000	"	"	..	86	40
	30.	"	"	7 "	322,300	"	"	..	145	04
	30.	"	"	6 "	277,700	"	"	..	124	97
Feb.	1.	"	"	6 "	291,100	"	"	..	131	00
	1.	"	"	6 "	293,400	"	"	..	132	03
	2.	"	"	2 "	91,800	"	"	..	41	31
	3.	"	"	4 "	190,000	"	"	..	85	50
	9.	"	"	3 "	131,700	"	"	..	59	27
	9.	"	"	3 "	141,100	"	"	..	63	50
	17.	"	"	4 "	194,600	"	"	..	87	57
	19.	"	"	10 "	483,500	"	"	..	217	58
	20.	"	"	6 "	272,900	"	"	..	122	81

\$2,611 70

Forward \$7,611 37

PATTON, ALA., —, 1892.

Central Railroad of Georgia in account with Virginia & Alabama Coal Company, miners and shippers of domestic and steam coal.

For coal shipped to H. R. Dill, sup't.

1891.

Dec. 21.	To inv. rend.	3	cars coal	143,000 lbs. at 90c...	\$64 35
22.	"	2	"	92,200 " " ..	41 49
28.	"	4	"	202,500 " " ..	91 13
28.	"	5	"	239,200 " " ..	107 64
29.	"	3	"	141,900 " " ..	63 86
29.	"	3	"	131,800 " " ..	59 31

53

Dec. 30.	To inv. rend.	6	cars coal	286,000 lbs. at 90c...	\$128 70
30.	"	6	"	293,500 " " ..	132 08
31.	"	5	"	241,800 " " ..	108 81
31.	"	5	"	246,700 " " ..	111 02

1892.

Jan. 2.	"	3	"	132,200 " " ..	59 49
2.	"	3	"	143,300 " " ..	64 35
4.	"	7	"	334,000 " " ..	150 30
4.	"	7	"	347,500 " " ..	156 38
5.	"	3	"	150,800 " " ..	67 86
5.	"	4	"	180,600 " " ..	81 27
6.	"	5	"	231,600 " " ..	104 22
6.	"	3	"	121,700 " " ..	54 77
7.	"	4	"	201,700 " " ..	90 77
7.	"	6	"	274,700 " " ..	123 62
8.	"	4	"	172,400 " " ..	77 58
8.	"	4	"	203,500 " " ..	91 58
9.	"	4	"	181,800 " " ..	81 81
9.	"	4	"	180,900 " " ..	81 41
15.	"	2	"	102,500 " " ..	46 13
15.	"	2	"	101,500 " " ..	45 68
16.	"	5	"	234,600 " " ..	105 57
16.	"	5	"	242,700 " " ..	109 22
19.	"	3	"	153,300 " " ..	68 98
19.	"	5	"	233,000 " " ..	104 85
20.	"	3	"	152,500 " " ..	68 53
20.	"	3	"	151,900 " " ..	68 36

 \$2,811 12

To balance statement rendered December 20, '91.....

2,188 55

 Forward..... \$4,999 67

Central Railroad of Georgia in account with Virginia and Alabama Coal Company, miners and shippers of domestic and steam coal.

For coal shipped to H. R. Dill, superintendent.

1891.	Forward.....	\$5,503 56
Nov. 9.	To inv. rend. 6 cars coal, 302,900 lbs. at 90c...	136 31
10.	" " 5 " " 253,500 " " ..	114 08
11.	" " 8 " " 392,900 " " ..	176 81
12.	" " 5 " " 253,000 " " ..	113 85
12.	" " 8 " " 384,800 " " ..	173 16
13.	" " 6 " " 266,700 " " ..	120 02
Dec. 9.	" " 5 " " 253,000 " " ..	113 85
9.	" " 5 " " 231,400 " " ..	104 13
15.	" " 4 " " 204,300 " " ..	91 94
15.	" " 3 " " 131,200 " " ..	59 04
16.	" " 7 " " 337,900 " " ..	152 06
16.	" " 6 " " 261,000 " " ..	117 45
17.	" " 6 " " 254,200 " " ..	114 39
17.	" " 8 " " 405,500 " " ..	182 48
18.	" " 3 " " 152,800 " " ..	68 76
18.	" " 4 " " 198,700 " " ..	89 42
19.	" " 2 " " 102,600 " " ..	46 17
19.	" " 3 " " 130,800 " " ..	58 86
		<hr/>
		\$2,032 78
		<hr/>
		\$7,536 34

CREDIT.

1891.		
Dec. 15.	By cash.....	\$690 14
" " "	.....	1,400 21
" " "	.....	388 54

1892.		
Jan. 31.	By cash.....	200 43
31.	" "	644 86
31.	" "	2,023 61
		<hr/>
		\$5,347 79

Total balance due as of December 20th,
1891..... \$2,188 55

PATTON, ALA., —, 1892.

Central Railroad of Georgia in account with Virginia and Alabama Coal Co., miners and shippers of domestic and steam coal.

For coal shipped to H. R. Dill, superintendent.

1891.				Forward.....			\$2,491 36
Oct. 7.	To	inv. rend.	4	cars coal, 200,400 lbs. at 90c. . .			90 18
7.	"	"	4	" " 203,500 " " ..			91 58
8.	"	"	4	" " 191,600 " " ..			86 22
8.	"	"	4	" " 200,900 " " ..			90 41
9.	"	"	3	" " 143,000 " " ..			64 35
9.	"	"	4	" " 184,300 " " ..			82 94
10.	"	"	4	" " 191,200 " " ..			86 04
10.	"	"	4	" " 203,800 " " ..			91 71
12.	"	"	4	" " 192,400 " " ..			86 58
12.	"	"	4	" " 201,400 " " ..			90 63
14.	"	"	4	" " 172,100 " " ..			77 45
14.	"	"	4	" " 171,600 " " ..			77 22
15.	"	"	4	" " 202,900 " " ..			91 31
15.	"	"	4	" " 183,600 " " ..			82 62
16.	"	"	4	" " 191,600 " " ..			86 22
16.	"	"	4	" " 193,000 " " ..			86 85
17.	"	"	4	" " 201,800 " " ..			90 81
17.	"	"	4	" " 193,700 " " ..			87 17
19.	"	"	4	" " 190,800 " " ..			85 86
20.	"	"	4	" " 182,400 " " ..			82 08
20.	"	"	3	" " 150,600 " " ..			67 77

56

Oct. 21.	To	inv. rend.	4	" " 190,300 " " ..			\$85 64
"	"	"	4	" " 208,100 " " ..			93 65
22.	"	"	3	" " 141,700 " " ..			63 77
23.	"	"	4	" " 205,900 " " ..			92 66
26.	"	"	3	" " 130,900 " " ..			58 91
"	"	"	4	" " 109,400 " " ..			85 68
30.	"	"	4	" " 200,100 " " ..			90 05
"	"	"	4	" " 154,600 " " ..			87 57
Nov. 2.	"	"	4	" " 183,100 " " ..			82 40
3.	"	"	4	" " 201,900 " " ..			90 85
4.	"	"	4	" " 192,300 " " ..			86 54
5.	"	"	3	" " 132,900 " " ..			59 81
6.	"	"	2	" " 102,800 " " ..			46 26
7.	"	"	4	" " 191,700 " " ..			86 27
9.	"	"	6	" " 280,300 " " ..			126 14

 \$3,012 20

 Forward... .. \$5,503 56

Central Railroad of Georgia in account with Virginia and Alabama Coal Company, miners and shippers of domestic and steam coal.

For coal shipped to H. R. Dill, sup't.

1891.

Sept. 16.	To	inv.	rend.	4 cars coal, 225,800 lbs., at 90c...	\$101 61
16.	"	"	3	" 168,400 " " ..	75 78
17.	"	"	1	" 40,000 " " ..	18 00
19.	"	"	3	" 150,700 " " ..	67 82
19.	"	"	2	" 92,800 " " ..	41 76
21.	"	"	1	" 50,600 " " ..	22 77
21.	"	"	1	" 51,000 " " ..	22 95
22.	"	"	1	" 52,000 " " ..	22 95
22.	"	"	1	" 50,800 " " ..	22 86
23.	"	"	4	" 191,700 " " ..	86 27

57

Sept. 23.	To	inv.	rend.	3 cars coal, 132,300 lbs., at 90c...	\$59 54
24.	"	"	4	" 193,000 " " ..	86 85
24.	"	"	2	" 85,700 " " ..	38 57
25.	"	"	4	" 193,400 " " ..	87 03
25.	"	"	3	" 151,900 " " ..	68 36
25.	"	"	1	" 50,600 " " ..	22 77
26.	"	"	4	" 194,800 " " ..	87 66
26.	"	"	3	" 152,200 " " ..	68 49
28.	"	"	4	" 203,000 " " ..	91 35
28.	"	"	3	" 150,900 " " ..	67 91
29.	"	"	1	" 41,000 " " ..	18 45
29.	"	"	4	" 191,600 " " ..	86 22
29.	"	"	3	" 142,100 " " ..	63 95
30.	"	"	4	" 201,900 " " ..	90 86
30.	"	"	3	" 143,700 " " ..	64 65
Oct. 1.	"	"	3	" 147,700 " " ..	66 47
1.	"	"	4	" 203,400 " " ..	91 53
2.	"	"	5	" 243,600 " " ..	109 62
2.	"	"	6	" 273,700 " " ..	123 17
3.	"	"	4	" 180,800 " " ..	81 36
3.	"	"	4	" 202,700 " " ..	91 22
5.	"	"	6	" 284,200 " " ..	127 89
5.	"	"	4	" 193,200 " " ..	86 94
7.	"	"	2	" 101,700 " " ..	45 77
6.	"	"	4	" 201,200 " " ..	90 54
6.	"	"	4	" 203,100 " " ..	91 40

Forward \$2,491 36

Jan.	26.	To inv. rend.	3 cars coal	150,000 lbs. at 90c...	\$67 50
	27.	"	4 " "	200,000 " " ..	90 00
	29.	"	2 " "	100,000 " " ..	45 00
Feb.	1.	"	3 " "	153,200 " " ..	68 94
	2.	"	2 " "	80,700 " " ..	36 32
	3.	"	5 " "	253,200 " " ..	113 94
	16.	"	7 " "	314,000 " " ..	141 30
	16.	"	6 " "	293,200 " " ..	131 94
	17.	"	6 " "	292,600 " " ..	131 67
	18.	"	6 " "	303,100 " " ..	136 40

 \$3,232 11

 Forward..... \$8,537 94

60

PATTON, ALA., March 4, 1892.

Central Railroad of Georgia in account with Virginia and Alabama Coal Company, miners and shippers of domestic and steam coal.

For coal shipped to D. D. Curran, sup't.

1891.	Forward.....	\$1,124 05
Dec. 21.	To inv. rend. 3 cars coal, 152,000 lbs., at 90c...	68 40
28.	" " 4 " " 183,300 " " ..	82 49
29.	" " 2 " " 101,700 " " ..	45 77
30.	" " 4 " " 181,800 " " ..	81 81
31.	" " 9 " " 421,900 " " ..	189 87
23.	" " 6 " " 310,000 " " ..	139 50
23.	" " 5 " " 280,000 " " ..	126 00
29.	" " 1 " " 53,000 " " ..	23 85
29.	" " 7 " " 360,000 " " ..	164 70
30.	" " 7 " " 358,000 " " ..	161 10
31.	" " 8 " " 416,000 " " ..	187 20
1892.		
Jan. 2.	" " 6 " " 270,000 " " ..	121 50
2.	" " 2 " " 81,600 " " ..	36 72
4.	" " 7 " " 327,100 " " ..	147 20
4.	" " 4 " " 220,000 " " ..	99 00
5.	" " 8 " " 404,100 " " ..	181 85
5.	" " 5 " " 240,000 " " ..	108 00
6.	" " 9 " " 412,000 " " ..	185 40
6.	" " 9 " " 401,800 " " ..	180 81
7.	" " 5 " " 233,500 " " ..	105 08
7.	" " 9 " " 460,000 " " ..	207 00
7.	" " 5 " " 270,000 " " ..	121 50
8.	" " 4 " " 181,400 " " ..	81 63
8.	" " 2 " " 102,100 " " ..	45 95
9.	" " 4 " " 191,400 " " ..	86 13
9.	" " 3 " " 102,100 " " ..	63 95
9.	" " 4 " " 194,900 " " ..	87 71
11.	" " 9 " " 480,000 " " ..	216 00
12.	" " 5 " " 290,000 " " ..	130 50

61

Jan. 14.	To inv. rend.	4 cars coal	210,000 lbs. at 90c...	\$94 50
15.	"	" 2 " "	101,500 " " ..	45 68
15.	"	" 3 " "	141,700 " " ..	63 77
15.	"	" 3 " "	160,000 " " ..	72 00
16.	"	" 3 " "	141,600 " " ..	63 72
16.	"	" 5 " "	252,200 " " ..	113 49
15.	"	" 11 " "	560,000 " " ..	252 00
				<hr/>
				\$4,181 78

Forward..... \$5,305 83

PATTON, ALA., *March 4, 1892.*

Central Railroad of Georgia in account with Virginia and Alabama Coal Company, miners and shippers of domestic and steam coal.

For coal shipped to D. D. Curran, sup't.

1891.

Oct. 7.	To inv. rend.	6 cars coal	263,100 lbs., at 90c...	\$118 40
8.	"	" 1 " "	50,400 " " ..	22 68
8.	"	" 1 " "	50,800 " " ..	22 86
9.	"	" 1 " "	50,700 " " ..	22 82
9.	"	" 5 " "	251,700 " " ..	113 27
10.	"	" 4 " "	183,000 " " ..	82 35
14.	"	" 6 " "	279,700 " " ..	125 87
15.	"	" 3 " "	154,900 " " ..	69 71
16.	"	" 5 " "	244,500 " " ..	110 03
17.	"	" 5 " "	251,300 " " ..	113 09
19.	"	" 7 " "	335,100 " " ..	150 80
20.	"	" 8 " "	382,600 " " ..	172 17
				<hr/>
				\$1,124 05

Forward..... \$1,124 05

62

EXHIBIT "E."

PATTON, ALA., *March 4, 1892.*

Central Railroad of Georgia in account with Virginia and Alabama Coal Company, miners and shippers of domestic and steam coal.

For coal shipped to B. C. Epperson, sup't.

1891.

Dec. 21.	To inv. rend.	3 cars coal	141,200 lbs., at 90c...	\$63 54
22.	"	" 2 " "	103,300 " " ..	46 49
28.	"	" 5 " "	242,100 " " ..	109 95
29.	"	" 2 " "	90,600 " " ..	40 77
30.	"	" 6 " "	303,600 " " ..	136 62
31.	"	" 5 " "	249,800 " " ..	112 41
23.	"	" 5 " "	300,000 " " ..	135 00

1892.

Jan. 2.	"	" 3 " "	129,500 " " ..	58 28
2.	"	" 3 " "	132,200 " " ..	59 49

Jan.	4.	To inv. rend.	6 cars coal	281,800 lbs. at 90c...	\$126 81
	5.	"	" 8 " "	401,600 " " ..	180 72
	6.	"	" 10 " "	496,700 " " ..	223 52
	7.	"	" 5 " "	253,100 " " ..	113 90
	8.	"	" 6 " "	292,500 " " ..	131 63
	9.	"	" 8 " "	373,800 " " ..	168 21
	15.	"	" 3 " "	142,000 " " ..	63 90
	16.	"	" 4 " "	202,500 " " ..	91 13
	19.	"	" 7 " "	343,900 " " ..	154 76
	20.	"	" 3 " "	153,300 " " ..	68 99
	21.	"	" 6 " "	290,900 " " ..	130 91
	22.	"	" 4 " "	201,300 " " ..	90 59
	23.	"	" 5 " "	229,900 " " ..	103 46
Feb.	16.	"	" 7 " "	332,200 " " ..	149 49
	17.	"	" 5 " "	202,000 " " ..	90 90
	18.	"	" 1 " "	50,000 " " ..	22 50
	19.	"	" 7 " "	334,600 " " ..	150 57

63

Feb.	20.	To inv. rend.	7 cars coal	353,600 lbs. at 90c...	159 12
	16.	"	" 8 " "	362,900 " " ..	163 31
	22.	"	" 1 " "	51,700 " " ..	23 27
	23.	"	" 10 " "	487,000 " " ..	219 15
	25.	"	" 6 " "	283,300 " " ..	127 40
	29.	"	" 6 " "	256,900 " " ..	115 61

 \$3,632 40

To balance statement rendered December
20th, 1891..... 128 63

Total amount due to March 4th, 1892.. \$3,761 03

PATTON, ALA., *March 4, 1892.*

Central Railroad of Georgia bought of Virginia and Alabama Coal
Company, miners and shippers — domestic and steam coal.

Date.	Car initial.	Car No.	Net weight.	Rate.	Amount.
Oct. 21st ..	G. P.	18586	52,000		
" 21st ..	"	18576	50,800		
" 23d ...	"	18105	50,600		
" 30th ...	C. of G.	12073	40,700		
Nov. 7th ..	R. & D. ..	15309	40,800		
" 10th ..	G. P.	21108	50,800		
			<hr/> 285,800	90c.	128 63

Shipped to B. C. Epperson, sup't, Augusta, Ga.

MAY 26TH, 1892.

Upon consideration of the foregoing intervening petition, it is ordered:

64 1st. That the intervenor be made a party complainant, and the intervening petition allowed and filed.

2d. That a copy of the petition (exclusive of the shipping tickets appended to the several exhibits) and of this order be served, as soon as may be, upon the Richmond and Danville Railroad Company in the manner prescribed by the order of the court dated April 12, 1892, and upon Lawton & Cunningham, solicitors for the Central Railroad and Banking Company, or upon Adams, Denmark & Adams, solicitors.

3d. That the defendants hereto file any demurrer, plea or answer which they may desire to interpose by the 7th day of June next, and that the same, together with the original petition, be referred to W. D. Nottingham, special master, who shall hear the cause on the 9th of June, in Macon, at 10 a. m., in the grand jury room of the U. S. court; and that within five days he shall report to the court his finding, with the evidence submitted, and that either party shall have five days within which to accept said finding, and at the end of said period of five days the cause will be heard by the court, or otherwise assigned for a hearing.

EMORY SPEER,
U. S. Judge.

I hereby certify that on May 26th, 1892, at Macon, Ga., in my district, I served a copy of the within petition and order on Henry R. Jackson, of counsel of record for R. & D. R. R. Co., and acknowledgment for W. H. Green, general manager of the Richmond and Danville Railroad Company, by H. R. Jackson, and at the same time exhibiting to him this, the original, bearing the signature of the judge.

The return of—

W. P. CORBETT,
U. S. Marshal,
By G. F. WHITE, *Deputy.*

I certify that I have this 30th day of May, 1892, at Savannah, in my district, served personally a copy of within writ of intervention on Messrs. Lawton & Cunningham, counsel for the Central Railroad and Banking Company of Georgia.

Dated Savannah, Ga., May 30, 1892.

WALTER P. CORBETT,
U. S. Marshal,
By J. C. HEYWARD, *Deputy.*

65 Endorsement: U. S. circuit court, eastern division, southern district of Georgia. Rowena M. Clarke *et al.* vs. The Central Railroad and Banking Company of Georgia *et al.*; Virginia and Alabama Coal Company vs. Central Railroad and Banking Company of Georgia. Filed in office this 26th day of May, 1892. Cecil Morgan, deputy clerk. Hill, Harris & Birch, counsel for intervenor.

Demurrer of the Central Railroad and Banking Company.

In the Circuit Court of the United States for the Eastern Division
of the Southern District of Georgia.

ROWENA M. CLARKE <i>et al.</i> , Complainants,	}	In Equity. Intervention of the Virginia and Alabama Coal Company.
and		
THE CENTRAL RAILROAD AND BANKING COMPANY OF GEORGIA <i>et al.</i> , Defendants.		

The demurrer of the said Central Railroad and Banking Company
of Georgia and the board of receivers to the intervention of the
said Virginia and Alabama Coal Company.

These defendants, not confessing or acknowledging all or any of
the matters or things in said intervention contained, to be true in
such manner and form as the same are herein alleged and set forth,
doth demur to said intervention and for cause of demurrer sheweth:

1. That said intervention does not set forth such a cause of
66 action against the said Central Railroad and Banking Com-
pany of Georgia or against said board of receivers as entitles
said intervenor to any relief against them or either of them.

2. That from the averments of said intervention it appears that
the contract set up therein was made with the Richmond and Dan-
ville Railroad Company alone, and if there be any indebtedness
thereunder it is the indebtedness of that company and not of the
said Central Railroad and Banking Company of Georgia or of the
said board of receivers.

Wherefore, and for other and divers good causes of demurrer ap-
pearing in the said intervention, the said Central Railroad and
Banking Company of Georgia, and said board of receivers, do demur.
And they pray the judgment of this honorable court whether they
shall be compelled to make any answer to the said intervention and
they pray to be hence dismissed with their reasonable costs in this
behalf sustained.

LAWTON & CUNNINGHAM,

R. F. LYON,

DENMARK, ADAMS & ADAMS,

Solicitors for Central Railroad and Banking Co. of Georgia.

I hereby certify that the foregoing demurrer in my opinion is well
founded in point of law.

H. C. CUNNINGHAM,

Of Counsel for Central Railroad and Banking Co. of Georgia.

STATE OF GEORGIA, }
County of Chatham. }

Personally appeared H. M. Comer, who being duly sworn deposes
and says that he is the chairman of the board of receivers,

67 sued in the foregoing suit, and that the foregoing demurrer is not interposed for delay.

H. M. COMER.

Sworn to and subscribed before me, this 24th day of June, 1892.

A. L. ALEXANDER,

Notary Public, C. C., Ga.

Endorsement: In United States circuit court of the southern district of Georgia, eastern division. Rowena M. Clarke *et al.* vs. The Central Railroad and Banking Company of Georgia *et al.* Intervention of Virginia and Alabama Coal Company. Demurrer of Central Railroad and Banking Company of Georgia. Filed in office, this June 25th, 1892. L. M. Erwin, deputy clerk. Lawton & Cunningham, attorneys for C. R. R. and Banking Co. of Georgia.

Motion of Richmond and Danville Railroad Company to be Stricken as Party Defendant to Intervention of Virginia and Alabama Coal Company.

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

MRS. ROWENA M. CLARKE *et al.*

vs.

THE CENTRAL RAILROAD AND BANKING COMPANY *et al.*

} In Equity.

In the matter of the intervention of the Virginia and Alabama Coal Company.

And now comes the Richmond and Danville Railroad Company and moves that the order of this court, of date April 12th, 68 1892, so far as it requires the movant to be made a party defendant to the interventions and other proceedings therein referred to, be rescinded, and that the Richmond and Danville Railroad Company be stricken as a party defendant to the intervention of the Virginia and Alabama Coal Company upon the following grounds:

1st. Because the Richmond and Danville Railroad Company cannot be proceeded against in this court, by intervention based on an alleged claim against it, having no connection whatever with the issues arising upon the pleadings in the above stated main case, and prosecuted by a party not in any way connected with such litigation. The Richmond and Danville Railroad Company has the right under the statutes of the United States to be sued only in regular form with such time for pleading, such rules as to service, and as to trial by jury, as are prescribed by such statutes.

2d. Because the Richmond and Danville Railroad Company cannot be made a party defendant to a summary proceeding of this nature, especially, when based upon a cause of action not joint, thus depriving it of the protection afforded by the usual proceedings and mode of trial provided by the statutes of the United States.

3d. Because this court has no jurisdiction of a proceeding of this character against the Richmond and Danville Railroad Company for the following reasons: The intervenor is a citizen of the State of Alabama and the Richmond and Danville Railroad Company is a citizen of the State of Virginia. Further the said railroad company is neither a resident or inhabitant of, nor was it found in the eastern division of the southern district of Georgia. Said company respectfully submits to the court that the pendency of the bill of Mrs. Rowena M. Clarke *et al.* against the Richmond and Danville Railroad Company *et al.* in this court does not give to it jurisdiction of causes of action against said company other than those presented by the bill aforesaid—and especially has the court no power to proceed thereon on intervention filed.

Wherefore, the Richmond and Danville Railroad Company submits this motion, and asks judgment for — dollars, its costs in this behalf laid out and expended.

June 17th, 1892.

JOSEPH R. LAMAR,
HENRY JACKSON,

Attorneys for R. and D. R. R. Co.

69 The motion of the Richmond and Danville Railroad Company herein contained to modify the order of April 12th, 1892, is denied and the questions raised by the demurrers of the Central Railroad and Banking Company and the Richmond and Danville Railroad Company to the intervention of the Virginia and Alabama Coal Company are reserved for decision at the final hearing of said intervention. In the meantime the special master is directed to proceed to take and hear the evidence on said interventions and make his report thereon as heretofore ordered.

August 17th, 1892.

EMORY SPEER,
United States Judge.

Filed August 19th, 1892.

CECIL MORGAN,
Deputy Clerk.

Endorsement: Rowena M. Clarke *et al.* vs. The Central Railroad and Banking Company *et al.* Motion of Richmond and Danville Railroad Company to be stricken as party defendant to intervention of Virginia and Alabama Coal Company. Filed June 17th, 1892. L. M. Erwin, deputy clerk. Joseph R. Lamar, Henry Jackson, attorneys for R. & D. R. R. Co.

70 *Amendment to Intervention of Virginia and Alabama Coal Company.*

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

ROWENA M. CLARKE *et al.*

vs.

THE CENTRAL RAILROAD AND BANKING COMPANY OF
GEORGIA *et al.*

} In Equity.

To the honorable the judges of the circuit court of the United States for the eastern division of the southern district of Georgia :

The Virginia and Alabama Coal Company, an intervenor in the above-entitled cause, under leave of the court, granted the 26th day of May, 1892, prays leave of the court to amend its intervening petition by setting up the following additional facts which have come to the attention of intervenor, and asking such relief as may be appropriate thereto.

Intervenor avers that the quantities of coal set forth in said intervening petition and the exhibits thereto, were delivered to the several division superintendents of the said Central Railroad and Banking Company of Georgia, by intervenor at the times in said intervening petition shown; and in the manner and at the places there shown, and that said coal was furnished and delivered by intervenor to said Central Railroad and Banking Company of Georgia, under the contract in said intervening petition set forth; and that said coal was furnished said Central Railroad and Banking Company of Georgia for the purpose of being used by it in the running of its machinery and the prosecution of its business. But intervenor has since the time of bringing said intervening petition been reliably informed, and verily believes that only a part of the coal delivered by intervenor to said Central Railroad and Banking Company of Georgia,

under said contract, and for which the said sum of twenty-six
71 thousand six hundred and seven dollars and forty-four cents
is owing and unpaid, had been actually used and consumed
by said Central Railroad and Banking Company of Georgia prior to and up to the time of the appointment of the receivers of said Central Railroad and Banking Company of Georgia by this honorable court; and that a great portion of said coal purchased from intervenor remained on hand in the bins and storage places of the said Central Railroad and Banking Company of Georgia at the time when E. P. Alexander was by this honorable court appointed temporary receiver of said Central Railroad and Banking Company of Georgia and its properties, and a large part of it was still on hand when H. M. Comer, Joseph Hull, E. P. Howell, James Swann, J. K. Garnett, A. Vetsburg, C. H. Phinzy, H. T. Inman, Geo. J. Mills, Henry R. Jackson and U. B. Harrold were appointed by this honorable court a board of receivers of said Central Railroad and

Banking Company of Georgia and its properties; and said coal went into the possession of said receivers of this honorable court and has since that time been actually used by said receivers in the running of the machinery of, and the operation of the business of said Central Railroad and Banking Company of Georgia, by virtue of their office and duties as such receivers. Intervenor shows that said coal was worth to said receivers considerably more than the price at which intervenor sold the same under said contract, and could not have been purchased by said receivers at the low price of 90 cents per ton of 2,000 pounds, the rate at which intervenor is now seeking payment therefor. Intervenor shows that the purchase price, or value of said coal, so used by said receivers, should be reckoned and decreed to be a part of the operating expenses of the railroad property in the hands of the said receivers, and should be paid as a part of the receivers' expenses in the running of said railroad; and that the same is a charge upon the income, and the property of said Central Railroad and Banking Company of Georgia, that should be paid ahead of all debts, liens, and priorities existing against said company.

Wherefore intervenor prays that an account may be taken of all such portion of the coal sold and furnished by intervenor to said Central Railroad and Banking Company of Georgia, as was taken possession of by the receivers of this honorable court, and used by them in the operation of said railroad; and that so much of
 72 said sum of \$26,607.44, as is for coal taken possession of, and used by said receivers in the operation of the railroad and other property in their hands, may be decreed to be paid by the receiver of this court, as part of the expenses of operating said business.

And intervenor, waiving answer under oath, prays for such other and further relief as may be meet and proper; and prays that H. M. Comer, receiver of this court, may show cause why the relief herein asked for may not be granted.

HILL, HARRIS & BIRCH,
 STEED & WIMBERLY,
*Attorneys and Solicitors for the Virginia
 and Alabama Coal Co.*

STATE OF GEORGIA, }
 Bibb County. }

In person comes H. R. Dill, who, being duly sworn, deposes and says on oath that to the best of his knowledge and belief the statements of fact in the foregoing petition are true.

H. R. DILL.

Sworn to and subscribed before me, this 23d day of September, 1892.

C. M. ORR,
Notary Public, Bibb County, Ga.

In the Circuit Court of the United States for the Eastern Division
of the Southern District of Georgia.

ROWENA M. CLARKE *et al.*

vs.

THE CENTRAL RAILROAD AND BANKING COMPANY } In Equity.
OF GEORGIA *et al.* }

Intervention of the Virginia and Alabama Coal Company.

73 The foregoing amendment to the intervening petition of the Virginia and Alabama Coal Company is allowed and ordered filed. Let the Central Railroad and Banking Company of Georgia, the Richmond and Danville Railroad Company, and H. M. Comer, receiver of the Central Railroad and Banking Company of Georgia, or their respective counsel, be furnished with a copy of the amendment.

Let said three defendants show cause why the prayers of said amendment should not be granted; and let the matters and things embraced in said amendment, and any and all defenses that may be made thereto, be referred to W. D. Nottingham, Esq., special master, for report and decision, as has already been ordered in respect to said intervening petition.

In chambers, September 24th, 1892.

EMORY SFEER, *Judge.*

Endorsement: United States circuit court, eastern division of the southern district of Georgia. *In re* Rowena M. Clarke *et al. vs.* The Central Railroad and Banking Company of Georgia *et al.* In equity. Intervention of Virginia and Alabama Coal Company. Amendment to intervening petition. Filed September 28, 1892. L. M. Erwin, deputy clerk.

Service.

I hereby certify that on October 8th, 1892, at Atlanta, Ga., in my district, I served a copy of the within amendment to intervening petition on Harry R. Jackson, of Jackson, Barrow & Jackson, of counsel of Richmond and Danville Railroad Company, personally and at the same time exhibiting to him this the original.

Return of

WALTER P. CORBETT,

U. S. Marshal.

74 Dated Macon, Ga., October 10th, 1892.

I certify that on the 10th day of October, 1892, at Savannah, in my district, I personally served the within intervention on H. M. Comer, receiver of the Central Railroad and Banking Company of

Georgia, by showing to him the same, with the seal of the court thereon, and at the same time delivering to him a copy thereof.

The return of

W. P. CORBETT,
U. S. Marshal,
By J. C. HEYWARD, Deputy.

Dated Savannah, Ga., October 10th, 1892.

Petition to Have Receiver Exhibit Documentary Evidence.

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

VIRGINIA AND ALABAMA COAL COM- PANY <i>vs.</i> RICHMOND AND DANVILLE RAILROAD COMPANY <i>et al.</i>	} Intervention in the Case of Mrs. Rowena M. Clarke <i>vs.</i> Central Railroad and Banking Company of Georgia <i>et al.</i>
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To the honorable judges for said circuit court for said division and district:

The petition of the Virginia and Alabama Coal Company, intervenor in said cause, respectfully sheweth that the receiver of this honorable court has in his possession certain documentary evidence which is material to be used in said cause on behalf of the intervenor, and which is as follows, to wit:

75 1st. The car records of the Central Railroad and Banking Company in its various divisions, showing when and where each of the cars described and numbered on the shipping tickets attached to the intervention were received by said railroad company on its several divisions; some being received at Augusta, Ga., for the South Carolina division, of which B. C. Epperson was superintendent; some being received for the main stem at a station known as Sebastopol and Savaunah, of which stem, H. R. Dill was superintendent; some for the Southwestern division at Macon, Smithville and Columbus, of which division D. D. Curran was superintendent, and a small number at Gordon and other local stations.

The said car records were kept in the offices of the superintendents of the aforesaid divisions and went into the possession of the receiver of said railroad company on the 4th of March, 1892.

Said evidence is material to the intervenor in that it shows the delivery to the said railroad company of the cars of coal shipped from the mines of the intervenor in the State of Alabama, and for which the shipping tickets are attached to the intervention.

2d. The reports of the coal-chute foreman at each of the stations mentioned in the preceding paragraph, made between the 1st of July, 1891, and the 4th of March, 1892, to the superintendents of the said three main divisions above mentioned, which monthly reports show the amount of coal received during the month and the amount

remaining on hand at the end of each month, of which reports duplicates were in the offices of the superintendents of said divisions at the time of the appointment of the receiver thereof; also the reports said division superintendents made to the general superintendent, Mr. V. E. McBee (so far as such reports cover the item of coal received during each month by said superintendents and showing how much remained on hand at the end of each month), of which reports duplicates were in the offices of the said division superintendents at the time of the appointment of said receiver.

Said evidence is material because it will show how much of the coal purchased from this intervenor was used in the operation of the said railroad company within the dates covered by said reports, and also how much of the coal purchased from this intervenor went into the possession of the receiver of said company.

3d. All letter-press copies of vouchers for coal which were
76 made out in the offices of the said division superintendents between the 1st of July, 1891, and the 4th day of March, 1892, which were made out and sent to the office of the auditor of the Richmond and Danville Railroad Company, in Atlanta, said letter-press copies being retained in the office of said superintendents (the latter alone being called for in this petition), and especially the voucher for the coal made out on or about the first day of April, 1892, in the office of the superintendents of said divisions, acting under the receiver of said railroad company, for coal used between the first day of March and fourth day of March, 1892; also all the original vouchers for coal with the bills of this intervenor attached, which vouchers were made out between the 4th of March, 1892, and June 1st, 1892, in the offices of the superintendents of said divisions under the receiver, and which will cover cars of coal shipped by intervenor shortly prior to March 4th, 1892, consigned as shown by said shipping tickets, but which cars did not reach destination until after the appointment of the receiver and which the receiver took possession of and used.

The aforesaid evidence is material to intervenor in that the same shows the amount of coal used by said railroad company while it was operated by the Richmond and Danville Railroad Company, and shows in connection with the evidence above mentioned how much coal shipped by intervenor went into the possession of the receivers of the Central Railroad and Banking Company.

WALTER B. HILL,
STEED & WIMBERLY,

Counsel for Intervenor.

Before me personally, came H. R. Dill, who on oath, says the allegations in the foregoing petition are true to the best of my knowledge and belief.

H. R. DILL.

Sworn to and subscribed before me this 23d day of September, 1892.

F. R. MARTIN,
U. S. Commissioner.

77 The foregoing petition having been presented, it is upon consideration ordered that the receiver of the Central Railroad and Banking Company do produce and exhibit before the special master on the hearing of this intervention, at the time designated by the special master for such hearing, the documentary evidence described in this petition, and if the production of the books and documents called for should be attended with inconvenience to the receiver, then he may have the said original books and documents examined by two persons, one of whom the receiver may select, and one of whom the intervenor may select, and who may make from said original books and documents a transcript of the matters set forth in the petition, which transcript may be used in lieu of the original.

EMORY SPEER, *Judge.*

September 24th, 1892.

Endorsement: U. S. circuit court, eastern division southern district of Georgia. Virginia and Alabama Coal Company vs. Richmond and Danville Railroad Company, receivers of the Central Railroad and Banking Company *et al.* Intervention in case of Rowena M. Clarke vs. Central Railroad and Banking Company. Petition to have receiver produce documentary evidence on hearing. Filed September 28th, 1892.

Service.

I certify that on the 10th day of October, 1892, at Savannah, in my district, I personally served the within intervention on H. M. Comer, receiver of the Central Railroad and Banking Company of Georgia, by showing to him the same, with the seal of the court thereon, and at the same time delivering to him a copy thereof.

The return of WALTER P. CORBETT.

Dated Savannah, Ga., October 10th, 1892.

By J. C. HEYWARD, *Deputy.*

Filed October 11th, 1892.

L. M. ERWIN,
Deputy Clerk.

78

Order as to Hearing before Master.

In U. S. Circuit Court, Southern District of Georgia.

ROWENA M. CLARKE <i>et al.</i>	}	Intervention of Virginia and Alabama Coal Company.
<i>vs.</i>		
THE CENTRAL RAILROAD AND BANK- ING COMPANY OF GEORGIA <i>et al.</i>		

Order as to hearing before master.

It being represented to the court that under an agreement between counsel, experts appointed by each of the parties concerned are now engaged in determining by examination of the books of

the Central Railroad and Banking Company of Georgia and of the Richmond and Danville Railroad Company, how much of the coal sued for by the Virginia and Alabama Coal Company was used on the lines of said parties respectively, it is ordered that said experts shall have leave each to file with the master a report of their determinations verified by affidavit on or before the 26th inst., and that the master shall not proceed to set said case for hearing until ten days after such reports are filed, and at such hearing if there be any conflict between such reports, either party may take further testimony as to the matter.

EMORY SPEER,
U. S. Judge.

In open court, November 19th, 1892.

Endorsement: U. S. circuit court, eastern division southern district of Georgia. Rowena M. Clarke *et al. vs.* The Central Railroad and Banking Company of Georgia *et al.* Intervention of Virginia and Alabama Coal Company. Order as to hearing before master. Filed November 19th, 1892. L. M. Erwin, deputy clerk.

79 *Order Allowing Counsel to Withdraw.*

Report of experts and extending time to take testimony in intervention of Virginia and Alabama Coal Company, Sloss Iron and Steel Company.

In the Circuit Court of the United States for the Western Division of the Southern District of Georgia.

ROWENA M. CLARKE <i>et al.</i>	}	In Equity. Bill, etc. Intervention of Virginia and Alabama Coal Company. Intervention — Sloss Iron and Steel Company.
<i>vs.</i>		
CENTRAL RAILROAD & BANK- ING CO. OF GEORGIA <i>et al.</i>		

Upon motion of solicitors for the Central Railroad and Banking Company of Georgia, it is ordered that the time within which the said Central Railroad and Banking Company of Georgia and its receiver shall be allowed to take testimony be and the same is hereby extended for twenty days from this date. It is further ordered that counsel for H. M. Comer, receiver, have leave to withdraw the report of the experts for examination.

In open court, this 22d day of March, 1893.

EMORY SPEER,
United States Judge.

Endorsement: United States circuit court, southern district of Georgia. Rowena M. Clarke *et al. vs.* The Central Railroad and Banking Company *et al.* Order allowing counsel to withdraw reports of experts and allowing time for taking testimony in intervention cases of Virginia and Alabama Coal Company and Sloss Iron and Steel Company. Filed March 22d, 1893. L. M. Erwin, deputy clerk.

Report of Master.

In the Fifth United States Circuit Court of the Western Division,
Southern District of Georgia.

MRS. ROWENA M. CLARKE	} In the District Court of the
<i>vs.</i>	
THE CENTRAL RAILROAD AND BANK-	} United States for the East-
ING COMPANY OF GEORGIA <i>et al.</i>		ern Division, Southern
	} District of Georgia.

Intervention of Virginia and Alabama Coal Company, referred to
Warren D. Nottingham, Esquire, special master.

Statement of the Case.

Intervenor complains against the Central Railroad and Banking Company of Georgia, the receivers of said corporation, and the Richmond and Danville Railroad Company, and avers the indebtedness of all of said defendants jointly and severally to said intervenor in the principal sum of twenty-six thousand and six hundred and seven and $\frac{44}{100}$ dollars (\$26,607.44), besides interest to be computed on the several amounts composing said sum, interest to be calculated from the first day of each month succeeding the delivery of coal in the preceding month.

81 Intervenor further alleges that the coal which was a consideration of said indebtedness, was purchased by the Richmond and Danville Railroad Company for the use of said Central Railroad and Banking Company of Georgia, and for its benefit, and the said purchases were made in pursuance of a contract appended to the intervention in these words:

EXHIBIT A.

Richmond and Danville Railroad Company, office general purchasing agent, Atlanta, Ga.

Joseph P. Minetree, general purchasing agent.

The Virginia and Alabama Coal Company—Mr. J. R. Ryan, V. P. and G. M., Birmingham, Ala.

DEAR SIR: We beg to accept your verbal offer of today to furnish the C. R. R. and B. Co. of Ga. with, say 275,000 tons of best quality engine steam coal, for the next twelve months, commencing July 1st, 1892, at 90 cents per ton of 2,000 pounds, to be delivered on cars at mines, and to be shipped in cars and in quantities to suit. Settlements for coal delivered in any one month to be made on or about the first of the succeeding month, and the C. R. R. and B. Co. of Ga. reserves the right to increase or decrease the monthly deliveries upon reasonable notice at any time. The division superintendents of the divisions for which the coal will be required, will communicate with you as to the monthly deliveries and all bills

for coal furnished under this contract, — be sent direct to the division superintendents.

Kindly confirm this at once and oblige,

Yours truly,

(Signed)

JOS. P. MINETREE,

General Purchasing Agent.

July 13th, 1891.

82 Intervenor further alleges that the coal was delivered in pursuance of the contract to the amount sued for, and was actually used by the Central Railroad and Banking Company of Georgia by the running of its machinery; that between the dates of September 16th, 1891, and March 4th, 1892, coal to the amount of twelve thousand eight hundred and twenty-three and $\frac{9}{10}$ dollars (\$12,823.93) was delivered to the superintendent of the Savannah division of the Central Railroad and Banking Company, at Savannah, Georgia, as per exhibit attached to intervention; that in like manner coal was shipped and delivered to the superintendent of the Southwestern division of said Central Railroad and Banking Company of Georgia, at Columbus, Georgia, to the amount of ten thousand and twenty-two and $\frac{4}{10}$ dollars (\$10,022.48), at dates and in quantities shown in exhibit attached to intervention; that in like manner coal was shipped and delivered to the superintendent of the South Carolina division of the said Central Railroad and Banking Company, at Augusta, Georgia, amounting to three thousand seven hundred and sixty-one and $\frac{3}{10}$ dollars (\$3,761.03) with bill of particulars also attached to intervention; each of said exhibits being supported by shipping tickets appended thereto.

Intervenor avers the liability of said Richmond and Danville Railroad Company for the total sum sued for, under its contract of purchase, and the liability of said Central Railroad and Banking Company, for the reason that the coal was bought and actually used for the benefit of said Central and claims it is entitled to a decree against said defendants, jointly and severally.

The intervention closes with a prayer for recovery of said total sum sued for against said defendants, jointly and severally, and for such other relief as the case may require.

To this intervention, which was filed on May 26th, 1892, intervenor files an amendment on the 28th day of September, 1892, in which it sets forth that the quantities of coal named in their original intervention were delivered to the several division superintendents of the said Central Railroad and Banking Company by intervenor, at times in said intervening petition shown, and in the manner and places there shown, and further avers that said delivery was under the contract in said intervention set forth, and that the coal was

83 furnished to the Central railroad for the purpose of being used by it, and further charges, on information, that only a part of the coal delivered by intervenor had been actually used by said Central prior to the appointment of a receiver of said corporation and that a greater part remained in the bins, on hand, of said company, went into possession of the receiver of this court,

and was actually used by said receivers in conducting the business of said Central Railroad and Banking Company.

The amendment further avers that the coal was worth to said receivers considerable more than the price at which it was sold under said contract, and could not have been purchased at the low price of ninety (90) cents per ton of 2,000 pounds at the time they took possession, and used the coal, and claims that the value of said coal should be reckoned and decreed to be a part of the operating expenses of the railroad property, in the hands of said receiver, and paid by them as a charge upon the income superior to all other debts, liens and priorities.

Said amendment concludes with the prayer for an accounting as to that portion of the coal used by said receivers, and it be paid the value of the same by said receivers.

In the Fifth United States Circuit Court, Western Division, Southern District of Georgia.

MRS. ROWENA M. CLARKE	} In the Circuit Court of the	
vs.		
CENTRAL RAILROAD AND BANKING COMPANY OF GEORGIA <i>et al.</i>		
		United States for the Eastern Division, Southern District of Georgia.

84 Intervention of the Virginia & Alabama Coal Company, referred to Warren D. Nottingham, Esq., special master.

To the honorable judges of said court:

Findings of Fact.

Your special master in pursuance of the order granted in the above-stated intervention, begs leave to submit the following report of his findings of fact from the evidence in said case:

Due notice having been given to the various counsel representing the several interests in said intervention, the master commenced the hearing of the testimony on the 7th day of October, 1892, and after several sessions, concluded the taking of the evidence, and upon due notice to counsel, recently heard the arguments in said intervention.

From the evidence, it appears at the inception of the case, counsel entered into the following agreement in writing, which was introduced in evidence:

"The Virginia & Alabama Coal Company vs. The Richmond and Danville Railroad Company and The Central Railroad and Banking Company and receivers thereof.

"Intervention in the case of Rowena M. Clarke vs. The Central Railroad and Banking Company, in the eastern division, southern district of Georgia.

"The following agreement is made for the purpose of saving time and unnecessary expense—it being expressly understood and stipu-

lated that the defendants represented by the undersigned, reserve the right to object to the competency or admissibility of the evidence and waive no objection heretofore raised, or which may hereafter be raised, respecting the right of the intervenor to proceed in said cause, and waives no other right or equity whatsoever.

"1. The original letter of which a correct copy is hereto attached having been lost, said copy may be used in lieu of the original (the copy being the same as that exhibited to the intervention).

"2. It is agreed that the coal described in the exhibits to the intervention by amounts and dates of shipment was delivered
85 by the intervenor to the (R. R. lines of the) Central Railroad and Banking Company of Georgia, which was being operated by the Richmond and Danville Railroad Company until the fourth of March last, at the dates and in the amounts shown in such exhibits.

"(This agreement is made, with the reservation of the right to show and prove any error in said exhibits, should it be hereafter discovered.)

"This October 5th, 1892.

"LAWTON & CUNNINGHAM.
"HENRY JACKSON."

Upon a careful consideration of all the evidence submitted, and the arguments had thereon, the special master finds:

1st. That the defendant, The Richmond and Danville Railroad Company, did under lease, or color of lease, operate the lines of the Central Railroad and Banking Company of Georgia, and conduct all of the business of said corporation, save and except the banking business in Savannah, Georgia, from the first day of June, 1891, to the fourth day of March, 1892, when this honorable court appointed receivers to take possession of the properties of said Central Railroad and Banking Company of Georgia (the said Richmond and Danville making a surrender of said property, to be disposed in the discretion of the court.)

2d. From the records of the original cause, and the evidence in this intervention, it is found that the Richmond and Danville Railroad Company entered into the management of the business of the Central Railroad and Banking Company of Georgia as aforesaid, by a verbal agreement, in which agreement the former corporation assumed the rights and privileges of said Georgia Pacific Railroad Company, under a lease or color of lease, previously entered into by the said Central Railroad and Banking Company of Georgia with the said Georgia Pacific Railroad Company, in which contract of lease the Richmond and Danville bound itself to furnish such supplies as are the subject-matter of this intervention.

3d. The intervenor, The Virginia and Alabama Coal Company, had no notice of the contract of lease aforesaid, or of the
86 verbal undertaking on the part of said Richmond and Danville Railroad Company, save and except what came to them from public notoriety and press comments.

4th. On the 13th day of July, 1891, the said intervenor entered

into a contract with Joseph E. Minetree, by which the intervenor agreed to sell during the twelve (12) ensuing months 275,000 tons of coal at ninety cents (90c.) per ton of 2,000 pounds f. o. b. at mines, to be shipped at times, and in quantities to suit.

The evidence of this contract was found in the testimony of J. R. Ryan, the present general manager of intervenor, and at the time of the contract, vice president of the same. This contract is evidenced by the testimony of said Ryan, and its acceptance by a letter appended to the intervention as an exhibit, and introduced in evidence before the master, being marked in this report Exhibit "D," page 64.

5th. The negotiations which ended in the contract aforesaid were begun with W. H. Green, general manager of the Richmond and Danville Railroad Company.

6th. It is found that the intervenor did not understand at the time of said contract, that it was selling to the Richmond and Danville Railroad Company, but was assured by said Minetree that he had the right to purchase for the Richmond and Danville railroad, and the Central Railroad and Banking Company of Georgia as well, and the said Ryan understood at the time of entering into the contract, that he was selling direct to the Central Railroad and Banking Company of Georgia.

See evidence of J. R. Ryan.

7th. In pursuance of said contract, and within its terms, intervenor delivered along the railroad lines of the said Central Railroad and Banking Company of Georgia, subsequent to said July 13th, 1891, and prior to and including the 4th day of March, 1892, and

87 before the appointment of the receiver aforesaid, 22,653* tons of coal. Subsequent to the appointment of the receiver and the fourth day of March, aforesaid, six thousand eight hundred and fifty-seven (6,857) tons were in a like manner delivered; making a total delivery of twenty-nine thousand five hundred and ten tons of coal at ninety (90) cents per ton—\$26,559, according to evidence of C. H. Schooler, who further testified that considerable coal was delivered direct from car to engines and could not be traced.

This is all that could be traced, according to reports No. 1 and 2.

8th. The delivery of all the coal under the contract was begun on the 16th day of September, 1891, and besides what was paid for, twenty-nine thousand five hundred and sixty-one (29,561) tons were delivered in all as shown by shipping tickets and reports, numbers one and two, and evidence of C. H. Schooler, worth at contract price \$26,607.44, amount sued for.

9th. Of the total amount of coal delivered under said contract, fifteen thousand two hundred and sixty-two (15,262) tons, worth at contract price \$13,735.80, were used by the Central Railroad and Banking Company of Georgia, or to be more exact, the Richmond and Danville Railroad Company in the operation of said Central Railroad and Banking Company of Georgia prior to the 4th day of

* See Summary Report No. 1, page 1.

March, 1892, and the appointment of the receivers aforesaid, seven thousand four hundred and forty-five (7,445) tons thereof, contract price \$6,700.50 were in the bins along the lines of said Central Railroad and Banking Company of Georgia, and were taken possession of by said receivers of said corporation appointed by this court, and used in the conduct of the business of said company.

And six thousand eight hundred and fifty-seven (6,857) tons, contract price \$6,171.30, were delivered in the same way, subsequent to March 4th and appointment of the receivers.

All this we find from evidence of C. H. Schooler, reports of examiners, reports of tonnage in bins, modified by affidavit as to Kellyton chute, making total of all the coal in bins March 4th, thirteen thousand eight hundred and seventy-two (13,872) tons, instead of eighteen thousand four hundred and twenty-six (18,426) tons.

Prorating this coal as per agreement, gives the result above stated.

10th. The value of the coal in the bins on the 4th day of March, 1892, at the places where the receivers took possession of
88 same, was as follows per ton of two thousand (2,000) pounds:

At Kramer, \$1.95; at Atlanta, \$2.20; at Macon, Kellyton and Columbus, \$2.65; at Savannah, \$3.10 and at Augusta, \$3.38. See evidence of J. R. Ryan.

11th. The several bills of particulars appended to the intervention, are supported by the evidence of Mr. J. R. Ryan and the shipping tickets signed by the several division superintendents aforesaid, and establish the fact that there was delivered by intervenor, to said superintendents, coal in amounts as follows:

To H. R. Dill at Savannah, Ga., \$18,171.92, upon which payments to the amount of \$5,347.79 were made in December and January, leaving a balance due of \$12,823.93. To D. D. Curran at Columbus, Ga., \$10,022.48, and to B. C. Epperson at Augusta, Ga., \$3,761.03, making a total of principal due on March 4th, 1892, to the amount of \$27,607.44, as alleged in intervention.

12th. The four (4) coal companies, to wit: intervenor, (The Virginia and Alabama Coal Company), the Sloss Iron and Steel Company, the Corona Coal and Coke Company, and Little Warrior Coal Company, alone furnished the coal that was found in the bins of the Central Railroad and Banking Company of Georgia, and used by the receivers of said corporation, appointed by this court.

While Mr. C. H. Schooler testified that he found upon the books of said Central Railroad and Banking Company aforesaid, the name of another coal company, in addition to the forementioned, showing that this other company, to wit: the Tennessee Coal, Iron and Railroad Company, had furnished coal to said corporation; the affidavit of G. B. McCormack, assistant general manager of the last-named coal company, establishes the fact that said company furnished no coal to the Central Railroad and Banking Company of Georgia within one year prior to the appointment of the receiver of the same, and that said coal company had no claim whatever upon any coal in the bins of said railroad company, at the time of the appointment of said receiver.

13th. The four (4) companies above stated as having furnished

coal found in the bins on March 4th, 1892, entered into a mutual agreement, written, dated November 26th, 1892, that each of them would claim and demand of and against said receiver such amount of said total of coal on the bins, or the value thereof, at the time of the receiver's appointment as is in proportion to their respective total debts, which debts are as follows:

The Virginia and Alabama Coal Company	\$26,607 44
The Sloss Iron and Steel Company	14,359 58
The Corona Coal and Coke Company	5,440 77
The Little Warrior Coal Company	3,166 86

Said agreement expressly disclaims any waiver on the part of said companies, of their right to demand of the said receiver of the Central Railroad and Banking Company of Georgia, payment in full of their entire demands aforesaid.

14th. The total number of tons, and value of coal including freight, and independent of contract price, found in bins March 4th, 1892, and used by the receivers of the Central Railroad and Banking Company of Georgia, was as follows:

2,501 tons at Savannah, Ga., at \$3.10	\$7,753 10
31 " Atlanta, Ga., at \$2.20	68 20
285 " Augusta, Ga., at \$3.38	963 30
5,836 " Macon, Ga., at \$2.65	15,465 40
250 " Smithville, Ga., at \$2.65	662 50
2,252 " Columbus, Ga., at \$2.65	5,967 80
44 " Sebastopol, at \$3.10	136 40
2,673 " Kellyton, Ala., at \$2.65	7,083 45
	<hr/>
	\$38,100 15

The number of tons in bins on March 4th, 1892, we obtain from the report of the expert examiners, modified as to Kellyton chute by affidavit of R. L. Shaw.

The prices of the coal, or rather its value, in the different bins at the several places where found by the receivers, is established by the testimony of Mr. J. R. Ryan. While the evidence of Mr. Ryan is meagre on this point, giving prices at only a few of the places where the coal was found, the master in estimating the value at other places where found, and also in the following item where delivered, adopted in each instance where the testimony is silent, the value, fixed at the nearest point to such chute or bin and in one instance a valuation intermediate between the values of the coal and the two places where value was fixed, and between which, the bin in question, to wit: (Wadley, between Macon and Savannah) is located.

This was the only feasible method of calculation, and is about as equitable a mode as could well be adopted.

It appearing from the report aforesaid, modified by affidavit of R. L. Shaw, as stated, and as above set forth, that thirteen thousand eight hundred and seventy-two (13,872) tons of coal were found in the bins on March 4th, 1892, and that the coal was worth at times

and places found, \$38,100.15, establishes an average value of \$2.74 per ton.

Then the *pro rata* share of that coal furnished by intervenor as per written agreement, being seven thousand four hundred and forty-five (7,445) tons makes this share of coal in bins worth \$20,399.30.

From report No. 2 and evidence of J. R. Ryan, as supplied by estimate as aforesaid, it appears that after March 4th, 1892, coal was delivered at places, and was worth prices, when and where found, as follows:

1,300 tons at Savannah, Ga., at \$3.10.....	\$4,030 00
167 " Wadley, Ga., at \$2.85	475 95
147 " Spartanburg, S. C., at \$3.10	455 70
66 " McCormack, S. C., at \$3.10	204 60
25 " Columbus, Ga., at \$2.65	66 25
20 " Enfaula, Ala., at \$2.65.....	53 00
25 " Americus, Ga., at \$2.65.....	66 25
20 " Troy, Ala., at \$2.65	53 00
192 " Smithville, Ga., at \$2.65.....	508 80
45 " Albany, Ga., at \$2.65.....	119 25
20 " Fitzpatrick, Ga., at \$2.65	53 00
25 " Fort Gaines, Ga., at \$2.65.....	66 25
20 " Union Springs, Ala., at \$2.65....	53 00
360 " Cedartown, Ga., at \$2.65.....	954 00
24 " Rome, Ga., at \$2.65 ...	63 60
293 tons at Chattanooga, Tenn., at \$2.65	776 45
91 522 tons at Griffin, Ga., at \$2.65.....	1,383 30
1,054 " Sebastopol, Ga., at \$3.10.....	3,265 40
505 tons at Atlanta, Ga., at \$2.20.....	1,111 00
820 " Macon, Ga., at \$2.65.....	2,173 00
293 " Columbus, Ga., at \$2.65.....	776 45
578 " Augusta, Ga., \$3.38	1,953 64
	<hr/>
	\$18,661 89

Making a total valuation of coal from intervenor unloaded after March 4th, 1892, \$18,661.89. If to this is added value of intervenor's *pro rata* of what was in bins on said date, as above set forth, to wit, \$20,399.30, we have a total value of \$39,061.19, representing the actual worth of coal, with freights added, supplied by intervenor and used by the receivers of the Central Railroad and Banking Company of Georgia aforesaid, this valuation having no reference to contract price. The contract value of coal used prior to receivers' appointment is, as we have seen, \$13,735.80.

In the Fifth United States Circuit Court, Western Division, Southern District of Georgia.

MRS. ROWENA M. CLARKE	}	In the Circuit Court of the United States for the Eastern Division, Southern District of Georgia.
vs.		
THE CENTRAL RAILROAD AND BANK- ING COMPANY OF GEORGIA <i>et al.</i>		

Intervention of the Virginia & Alabama Coal Company referred to Warren D. Nottingham, Esquire, special master.

To the honorable judges of said court:

Conclusions of Law.

Your special master, after careful consideration of the issues made by the pleadings in the above-stated intervention and of the
 92 evidence introduced in support of the same and arguments had thereon, begs leave to submit the following as his findings of law in said cause:

1st. It may be well to determine at the threshold of this final report the relations created between the Richmond and Danville Railroad Company, and the Central Railroad and Banking Company of Georgia, and intervenor, by the assumption of the rights and liabilities of the Georgia Pacific Railroad Company, under the lease or color of lease, to the last-named corporation, from the Central Railroad and Banking Company.

A charter creates an artificial person known to the law as a corporation, and while conferring upon it grants, rights and franchises, likewise imposes upon it certain duties and obligations to the public, and these duties and obligations the corporation is not released from discharging by a mere lease of its rights and properties and franchises to another corporation save and except where by express legislative authority, not only the right to lease, but this exemption of liability is granted. In Redfield's Law of Railways, page 616, this legal proposition is maintained, and the authority is cited and approved by the supreme court of our own State in the 70th Ga., page 470.

And so the master concludes that to exempt the Central Railroad and Banking Company of Georgia from its liability for the supplies furnished and used by it in its business management, it should be made to appear that there was neither any privity between it and intervenor, or any contract, expressed or implied. Instead of this being made to appear, however, it is affirmatively shown by the evidence of Mr. J. R. Ryan that Joseph P. Minetree, who contracted with intervenor, stated to him at the time of entering into the contract that he was authorized to purchase for the Central Railroad and Banking Company of Georgia, as well as the Richmond and Danville Railroad Company. This information was elicited in response to express inquiries made by the said Ryan as manager of intervenor, intervenor at that time being under obligation to other coal companies not to deal with the Richmond and Danville Railroad Company.

93 It is further in proof from the testimony of the same witness that this intervenor, at the time of the contract to sell, had no notice of the lease or color of lease aforesaid, save and except from general notoriety and press comments.

The master finds there was no such information brought home to intervenor or its officers as would charge it with notice of the true relations sustained to each other by the said Central Railroad and Banking Company, and the said Richmond and Danville Railroad Company; and regardless of this fact, the sale of the coal, which is the subject-matter of this intervention, was made under an express contract, the acceptance of which is embodied in the letter of July 13th, 1891, signed by Jos. P. Minetree, general purchasing agent.

2d. The officers of the Richmond and Danville Railroad Company had authority to purchase the coal sued for in this intervention, and to bind said company in said purchase.

3d. Part of the coal embraced in the exhibits attached to the intervention having been supplied to the Central Railroad and Banking Company of Georgia, within several months preceding the appointment of the receivers of said company, and balance after such appointment, the master finds that it was supplies necessary to keep the said corporation a "going concern," and necessary to conserve the properties of the corporation, and is a preferential debt, within the meaning of the term as used in *Farmers' Loan and Trust Company vs. Kansas City W. & N. W. R. Company*, in 53 Fed. Rep., page 187. Judge Coldwell, in rendering the decision referred to, cites with approval the case of *Fosdick vs. Schall*, 99th U. S., page 235; *Haile vs. Frost*, in the same volume, page 389, and also the case of *Burnham vs. Bowen*, 111th U. S. Rep., page 776.

Chief Justice Waite announces the opinion of the court in the last-stated case, and in summing up, uses this language:

"As far as current-expense creditors are concerned, the court should use the income of the receivers in the way the company would have been bound in equity and in good conscience to use it, if no change in the possession had been made." And further declares that "this rule is in strict accordance with the decision in *Fosdick vs. Schall*." In the case cited in the Federal Rep. (53d), the learned judge says:

94 "There is no fixed rule barring preferential debts contracted more than six months before the appointment of the receiver." And he says further, "there is no six months' rule."

In the case of *Haile vs. Frost*, above referred to, the Supreme Court gave priority to a claim for materials furnished three (3) years before the appointment of the receiver.

The supplies used in this intervention being of the character already stated, and actually used by the Central Railroad and Banking Company of Georgia, and having been furnished within the periods mentioned in the decisions referred to, the master is impelled to the conclusion that the receiver of this court, having in charge the properties of the said Central Railroad and Banking Company, should pay out of the current earnings of said company or any

other funds in his hands (if such earnings have been diverted), whatever amount the Central is liable for in this intervention. This conclusion as to funds to be used is supported by the decisions referred to.

4th. The master considers the Richmond and Danville Railroad Company and the Central Railroad and Banking Company of Georgia jointly and severally liable for the debt contracted in the purchase of said coal.

5th. The master does not find that the receiver should account for the true value of the coal found in bins and delivered after March 4th, 1892, regardless of the contract price, when and where they found it in the bins and storage places of the said Central railroad. While this contention might be true in the absence of a contract expressed or implied, it cannot be true in law, where, as in this case, the coal was purchased to be used in the operation of the Central Railroad and Banking Company of Georgia at a fixed price, to wit: ninety (90) cents per ton.

To allow this claim for its market value, without reference to the contract price agreed on, would be to give intervenor the right to repudiate its own contract by which it parted with the title to this coal, and to give it judgment for freight charges, which in equity and in law belong either to one or both of the defendants.

6th. In conclusion the master reports a judgment in favor of intervenor against the Richmond and Danville Railroad Company and against the said Central Railroad and Banking Company of

Georgia, and against H. M. Comer, receiver of said last-named defendant, jointly and severally for the principal sum of twenty-six thousand six hundred and seven dollars and forty-four cents (\$26,607.44) and interest thereon, at the rate of 7 per cent. per annum, from the 4th day of March, 1892, and all costs in this behalf incurred, to be taxed by the clerk of this court.

7th. The master further finds that, upon the payment of this sum by the said Central Railroad and Banking Company of Georgia, or the receiver thereof, a judgment be entered in its or his favor, (as the case may be) against the said Richmond and Danville Railroad Company for whatever sum may be paid for coal delivered prior to March 4th, 1892, and actually used before the receiver was appointed.

Respectfully submitted.

WARREN D. NOTTINGHAM,

Special Master.

Extracts Made by Master from Reports of Experts.

Report of C. H. Schooler and W. B. Stark, expert examiners, Central Railroad of Georgia in account with the Virginia and Alabama Coal Company.

For coal delivered to Superintendents Dill, Curran, and Epperson prior to and including March 4, 1892, as per attached memorandum.

	Pounds.
Savannah	10,670,200
Sebastopol	5,945,500
S. and A. R'y	91,200
Columbus	3,662,500
Union Springs	81,600
Macon	11,598,800
Crystal Ice Company	40,700
Atlanta	1,185,500
Cedartown	303,900
Chattanooga	448,600
Griffin	282,800
Cameron	50,000
96 Work-train	201,300
Smithville	773,400
Gordon	40,500
Between Birmingham and Columbus	41,000
Stillwell	143,400
Wadley	151,300
Albany	770,700
Americus	131,500
Fort Gaines	50,900
Fort Valley	150,600
Service train	131,500
Troy	322,600
Eufaula	750,100
Brantley	90,000
Ga. Midland R'y	120,000
Col. So. R'y	202,500
Muscogee Mills	50,000
Spartanburg	480,300
McCormick	523,200
Port Royal	294,600
Mile-post 95	50,800
Augusta	4,632,100
Coal for which we have railroad company's receipt, but which was not located by experts	844,100
	<hr/> 45,307,700

This is to certify that the above checkings are correct as taken from the records of the Central Railroad and Banking Company of Georgia. The checkings were made personally by the undersigned.

C. H. SCHOOLER,

Representing Virginia and Alabama Coal Company.

W. B. STARK,

Chief Clerk Statistical Department, R. & D. R. R.

- 97 Extracts made by master from report of C. H. Schooler and W. B. Starke, of file in the office of this court, showing the amount of coal delivered to the following superintendents and where delivered prior to and including March 4th, 1892, as per itemized statement in said report.

To B. C. Epperson—

	Pounds.		Pounds.
Augusta.....	4,632,100	Mile-post.....	50,800
Sebastopol.....	50,600	Eufaula.....	40,700
Service train.....	40,800	Columbus.....	52,600
Port Royal.....	292,600	McCormick.....	523,200
Spartanburg.....	480,300	Stillwell.....	143,400
Macon.....	40,400	Work-train.....	100,500
Total.....			6,450,000

To H. R. Dill—

Savannah, Ga.....	10,465,900	Sebastopol.....	5,662,900
S. and A. R. R.....	91,200	Columbus.....	456,900
Union Springs.....	81,600	Macon.....	355,800
Crystal Ice Company.....	40,700	Atlanta.....	892,000
Cedartown.....	303,900	Chattanooga.....	448,600
Griffin.....	230,300	Cameron.....	50,000
Work-train.....	50,000	Smithville.....	50,700
Birmingham and Co-		Wadley.....	51,300
lumbus.....	41,000	Gordon.....	40,500
Ryder.....	338,600		
Total.....			19,652,700

D. D. Curran—

Albany.....	770,700	Smithville.....	722,700
Americus.....	131,500	Fort Gaines.....	50,900
Sebastopol.....	232,000	Atlanta.....	293,500
Fort Valley.....	150,600	Griffin.....	52,500
Service train.....	90,700	Work-train.....	50,000
Troy.....	322,600	Eufaula.....	709,400
Savannah.....	204,300	Brantley.....	90,000
Ga. Midland..	120,000	Col. So.....	202,500
98 Wadley.....	100,000		505,500
Columbus.....	3,153,000	Macon.....	11,020,160
Muscogee Mills.....	50,000		
Total.....			19,205,000

Extracts made by master from reports of Experts Schooler and Starke. Central Railroad of Georgia in account with the Virginia and Alabama Coal Company. Report of C. H. Schooler and W. B. Starke. Record of cars unloaded after March 4th, 1892.

	Pounds.		Pounds.
Cedartown	91,400	Carrolltown	228,000
Wadley.....	93,200	Albany	50,400
Waynesboro.....	42,000		
Total.....			505,000

Cars unloaded after March 4th, 1892.

	Pounds.		Pounds.
Savannah.....	2,601,000	Wadley.....	235,000
Spartanburg.....	293,300	McCormick.....	131,600
Port Royal.....	262,100	Columbus(Ga. M. R'y)	50,700
Eufaula.....	40,500	Americus.....	50,100
Smithville.....	384,700	Albany	90,400
Fitzpatrick.....	40,100	Fort Gaines.....	50,000
Union Springs....	40,800	Cedartown.....	720,000
Rome.....	47,000	Chattanooga.....	586,600
Griffin.....	1,044,800	Sebastopol.....	2,107,200
Atlanta.....	1,009,600	Macon.....	1,640,700
Columbus.....	586,300	Augusta.....	1,156,900
Total.....			13,210,500

Extracts made by master from reports of Experts Schooler and Starke, report 3. Statement showing number of tons of coal on the bins of the Central Railroad and Banking Company of Georgia on the evening of March 4th, 1892, as shown by their records.

Bins.	No. tons.
Savannah, Ga.....	2,501
Atlanta, Ga.....	31
Augusta, Ga.....	285
Macon, Ga.....	5,836
Smithville, Ga.....	250
Columbus, Ga.....	2,252
Sebastopol, Ga.....	44
Kellyton, Ala.....	7,227

Total number of tons of coal of C. R. R. March 4th, 1892..... 18,426

Extracts made by master from reports of Experts Schooler and Starke, -eort 4. Statement showing number of tons of coal unloaded prior to and including March 4th, 1892, same being made up from the attached sheets, which have been correctly certified to.

Central R. R. & Banking Co. of Ga., Sloss Iron & Steel Company.

Places unloaded.	No. tons.
Savannah, Ga.	2,001.30
Augusta, Ga.	999.20
Macon, Ga.	2,643.20
Smithville, Ga.	1,184.95
Columbus, Ga.	3,170.65
Birmingham, Ala.	30.65
Griffin, Ga.	22.00
Americus, Ga.	31.00
Port Royal, S. C.	71.65
Eufaula, Ala.	151.30
Albany, Ga.	78.00
Troy, Ala.	52.95
Union Springs, Ala.	28.35
McCormick, S. C.	208.75
Spartanburg, S. C.	225.40
Lyons, Ga.	22.75
Fort Valley, Ga.	24.55
Hurtsboro.	21.95
Total.	10,968.60

100 In the Fifth United States Circuit Court, Western Division,
Southern District of Georgia.

MRS. ROWENA M. CLARKE <i>et al.</i>	} In Equity. In the Circuit Court, Eastern Division, Southern District of Georgia.
<i>vs.</i>	
THE CENTRAL RAILROAD AND BANK- ING COMPANY OF GEORGIA <i>et al.</i>	}

Intervention of the Virginia and Alabama Coal Company, referred
to Warren D. Nottingham, Esq., special master.

Affidavit of E. P. Alexander.

It was agreed by counsel in this cause that the affidavit of General E. P. Alexander as to the relationship sustained toward each other by the Central Railroad and Banking Company of Georgia and the Richmond and Danville Railroad Co., which affidavit is of file in this court, in the intervention of the Macon foundry and machine works, in the case of Rowena M. Clarke *et al.* against the Central Railroad and Banking Company of Georgia *et al.*, and is also copied and appended to the report of the special master in said intervention, shall be used as evidence in this intervention of the Virginia and Alabama Coal Company.

Endorsement: United States circuit court, eastern division southern district of Georgia. Mrs. Rowena M. Clarke *et al. vs.* Central Railroad and Banking Company of Georgia *et al.* Report of special master on intervention Virginia and Alabama Coal Company. Filed July 8th, 1893. L. M. Erwin, deputy clerk.

101

Supplemental Report of Special Master.

In the Fifth United States Circuit Court, Western Division, Southern District of Georgia.

ROWENA M. CLARKE <i>et al.</i>	}	In Equity. In the United States Circuit Court, Eastern Division, Southern District of Georgia.
<i>vs.</i>		
THE CENTRAL RAILROAD AND BANKING COMPANY OF GEORGIA.		

Intervention of the Virginia and Alabama Coal Company referred to Warren D. Nottingham, special master.

Report. Filed July 8th, 1893. Supplemental Report of Special Master.

To the honorable judges of said court:

Since the filing of said above-stated report, counsel having called the attention of the special master to a piece of testimony that was omitted from the report, by reason of the fact that it was in the hands of one counsel who expected to be further heard before said report was filed, the special master begs leave of the court to submit the following supplemental report to be considered, together with the report already filed:

From the evidence referred to, and which is hereto attached, it appears that of the coal shipped to Augusta by the four several companies, named in said report, there was as much as nine thousand seven hundred and fifty-two (9,752) tons used by the Port Royal and Augusta Railroad Company, the Port Royal and Western Carolina Railway Company, and the Charlotte, Columbia and Augusta Railroad Company during the months of October, 1891, to March 4th, 1892, inclusive.

102 It further appears from the same evidence that of the coal shipped by intervenor, cars containing nine hundred and twenty-five (925) tons were delivered directly to said three railroad companies.

Adopting the *pro rata* agreement of said four coal companies, by a calculation we find that intervenor's *pro rata* of the coal used from the bins by said three railroad companies amounts to 5,234 tons, which, added to the nine hundred and twenty-five tons delivered by the cars to said three railroad companies, makes a total of 6,159 tons of the coal sold by intervenor to the Richmond and Danville Railroad Company and the Central Railroad and Banking Company of Georgia, which were not used by said Central Railroad and Banking Company, and should, therefore, not be chargeable to the receiver of said last-named railroad company.

This coal was worth, at the contract price, \$5,543.10.

The special master therefore reports that so far as the judgment is against the receiver, found in the original report, it should be abated to the amount of the sum of \$5,543.10 and interest thereon from the 4th day of March, 1892, at 7 per cent. per annum.

Respectfully submitted.

WARREN D. NOTTINGHAM,

Special Master.

Endorsement: Supplemental report of special master, filed in office this July 19th, 1893. L. M. Erwin, deputy clerk.

103 *Exceptions to Master's Report by Richmond and Danville Railroad Company.*

In the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

MRS. ROWENA M. CLARKE *et al.*

vs.

CENTRAL RAILROAD AND BANKING COMPANY *et al.*

} In Equity.

In re intervention of Virginia and Alabama Coal Company.

And now comes the Richmond and Danville Railroad Company and reserving to itself all benefit of exception to the jurisdiction of said court over said Richmond and Danville Railroad Company, and reserving to itself all benefit under its motion to dismiss said intervention, for the reason and upon the grounds set out in said motion to dismiss, and being dissatisfied with the report of W. D. Nottingham, special master, comes now within thirty days from the date of the rendition and filing of said report, and excepts thereto, and says that the said special master erred in finding against the Richmond and Danville Railroad Company and in reporting that a judgment should be rendered against the Richmond and Danville Railroad Company jointly and severally with the Central Railroad and Banking Company of Georgia and H. M. Comer, receiver of the same, for the principal sum of \$26,607.44 and interest thereon at the rate of 7 per cent. per annum from March 4th, 1892, and all costs.

For more particular assignment of error, the said Richmond and Danville Railroad Company says that the special master erred in finding that "the Richmond and Danville Railroad Company and the Central Railroad and Banking Company of Georgia are jointly and severally liable for the debt contracted in the purchase of said coal" sued for in the intervention. The error being that said finding was contrary to the evidence of the witness, J. R. Ryan, who alone testified as to the contract, having sworn that he positively refused to sell said coal to the Richmond and Danville Railroad Company, and the master having found that said Ryan stated

104 that intervenor, at the time he made the contract, was under obligations to other coal companies not to deal with the Rich-

mond and Danville Railroad Company, and having further testified that J. P. Minetree stated to him, at the time of making said contract, that he, the said Minetree, was authorized to act for the Central Railroad and Banking Company, and thereupon said coal was sold to said Central Railroad and Banking Company, and the contract embodied in the letter of July 13th, 1893, was thereupon made.

2. Said master erred in finding against the Richmond and Danville Railroad Company for \$26,607.44, with interest and costs.

3. Said master erred in finding that upon the payment of said sum by the Central Railroad and Banking Company of Georgia, or the receiver thereof, a judgment be entered in its or his favor, as the case may be, against the Richmond and Danville Railroad Company for whatever sum may be paid for coal delivered prior to March 4th, 1892, and actually used before the receiver was appointed, the error being in addition to the error assigned above, that the same was contrary to evidence, and there is no finding as to the amount of coal used prior to the appointment of a receiver.

4. That the special master erred in filing a supplemental report, the said master having no authority, after having filed a report, to file a supplemental report.

5. That the said master erred in said supplemental report in finding that 925 tons were delivered to and used by the Port Royal and Augusta Railway Company, the Port Royal and Western Carolina Railway Company, and the Charlotte, Columbia and Augusta Railroad Company, said finding being contrary to evidence, and there being no evidence to support the same.

6. That the said master erred in finding that 6,159 tons of the value of \$5,543.10 should not be charged to the receiver of the Central Railroad and Banking Company.

7. That the master erred in finding and reporting that so far as the judgment is against the receiver found in the original report it should be abated to the amount of said sum of \$5,543.10 and the interest thereon from the 4th day of March, 1892, at 7 per cent. per annum.

8. That the said master erred in finding and reporting both in his report and supplemental report in this that the said master and this honorable court were without jurisdiction, the said bill of Rowena M. Clarke *et al. vs. Central Railroad and Banking Company of Georgia et al.*, having been dismissed by the order and decree of Justice Jackson prior to July 8th, 1893, when said report was filed.

Wherefore for the causes set forth the said Richmond and Danville Railroad Company prays that the said report of said master be not confirmed, but that the same be set aside and stricken from the file.

HENRY JACKSON,
J. R. LAMAR,

Solicitors for Richmond and Danville R. R. Co.

Endorsement: Exceptions to master's report in Virginia and Alabama Coal Company. Rowena M. Clarke *et al.* vs. Central Railroad and Banking Company of Georgia *et al.* and consolidated cases. Filed August 4th, 1893. L. M. Erwin, deputy clerk.

Exceptions to Master's Report Filed by Virginia and Alabama Coal Company.

ROWENA M. CLARKE	}	Intervention of the Virginia and Alabama Coal Co.
vs.		
CENTRAL RAILROAD AND BANKING		
COMPANY OF GEORGIA <i>et al.</i>		

Now comes the intervenor and excepts to the report of the master as follows:

First exception.

Intervenor excepts to the finding and conclusion of the master that the receiver of the Central Railroad and Banking Com-
 106 pany is not liable to the intervenor for the value of the coal which was on the bins and which was delivered after the receivership, to wit: the full value thereof at said bins and at the places of delivery, which value the master has ascertained from the evidence.

Intervenor shows that the said receiver took the coal on the bins and the coal which arrived after the 4th of March without any contract relative to the same and converted such coal to his use as receiver and is liable to intervenor for the full market value thereof.

Second exception.

Intervenor excepts to the supplemental or amended report of the master whereby he abates the amount of the judgment which he rendered against the receiver in his original report by the amount of five thousand five hundred and forty-three dollars for six thousand one hundred and fifty-nine tons of coal delivered by the Central Railroad and Banking Company to the Port Royal and Augusta, Port Royal and Western Carolina and the Charlotte, Columbia and Augusta railroads.

Intervenor submits that inasmuch as the Central Railroad and Banking Company received said coal as supplies, that the debt therefore is one of the current debts of the road in the operation of its business and entitled to preference under the rule of law commonly referred to as the rule in the case of *Fosdick vs. Schall*; and that the fact that the Central Railroad and Banking Company used a part of this coal on other lines which it was controlling, does not affect the operation of said rule.

HILL, HARRIS & BIRCH,
Solicitors for Intervenor.

Endorsement: United States circuit court, eastern division, southern district of Georgia. Rowena M. Clarke *vs.* Central Railroad and Banking Company *et al.* Exceptions to master's report. Intervention of the Virginia and Alabama Coal Company. Filed August 5th, 1893. L. M. Erwin, deputy clerk. Hill, Harris & Birch, solicitors for intervenor.

Exceptions to Master's Report Filed by Central Railroad and Banking Company.

In the Circuit Court of the United States, Eastern Division, Southern District of Georgia.

ROWENA M. CLARKE <i>et al.</i>	}	
<i>vs.</i>		
THE CENTRAL RAILROAD AND BANKING COMPANY OF GEORGIA <i>et al.</i>	}	
THE CENTRAL RAILROAD AND BANKING COMPANY OF GEORGIA	}	
<i>vs.</i>		
THE FARMERS' LOAN AND TRUST COMPANY.	}	Intervention of Virginia & Alabama Coal Company.
THE FARMERS' LOAN AND TRUST COMPANY	}	
<i>vs.</i>		
THE CENTRAL RAILROAD AND BANKING COMPANY OF GEORGIA <i>et al.</i>	}	Exceptions to Master's Report.

And now comes the Central Railroad and Banking Company of Georgia, and H. M. Comer, receiver of the Central Railroad and Banking Company of Georgia, and excepts to the report of W. D. Nottingham, special master, filed on July 8th, 1893, and as amended, on the above-stated intervention, and for cause of exception say:

108 *Exceptions to Finding of Fact.*

First exception. That the master, in his third finding of fact found that the Virginia & Alabama Coal Company had no notice of the contract of lease of the Central properties to the Georgia Pacific Railway Company, or of the verbal undertaking on the part of the Richmond and Danville Railroad Company to operate said Central properties, save and except from what came to them from public notoriety and press comments.

Whereas said master should have found:

That, on or about June 1st, 1891, the Central Railroad and Banking Company of Georgia had ceased to operate its lines of railroad, having, under color of a lease to the Georgia Pacific Railway Company surrendered possession of the same to the Richmond and Danville Railroad Company, and having then and there discharged all its former employees operating said lines, and did not thereafter

have any agent authorized to contract for supplies for the operation of said railroad lines, and that these facts were public and notorious. That J. R. Ryan, the vice-president and general manager of the Virginia & Alabama Coal Company, who made the contract with Joseph Minetree, for the supply of coal sued on, was, at the time, fully advised of the fact that the Central Railroad and Banking Company of Georgia had executed a lease of its lines to the Georgia Pacific Railway Company, and that under color of said lease the Richmond and Danville Railroad Company had gone into possession of said lines, and was operating the same, and that said Central Railroad and Banking Company had ceased to operate the same.

Herein 243 In support of this exception exceptors refer to the testimony of E. P. Alexander pages 1, 2 and 3 (herein 243, 244 244, 245), and particularly, the following extracts from the 245 testimony of J. R. Ryan, witness for intervenor, page 22, Master's Report :

Question. Do you know or not know that during the period of these shipments the Richmond and Danville had leased the Central railroad ?

Answer. I know what I heard about them.

Q. Well, heard from whom, from the Central officials and the Richmond and Danville ; both or either ?

A. Well, I heard from both.

Page 28, Master's Report (herein 134, 135) :

109 Q. Did you know at that time, or was it your understanding at that time that the Richmond and Danville was operating the lines of the Central Railroad of Georgia under a lease ?

A. Well, that was my understanding ; yes, sir. I did not know the nature of the lease.

Second exception. That the master erred in his sixth finding of fact, and in lieu thereof, he should have found as follows :

" That the said intervenor, at the time of making said contract, did then and there well understand and know that it was selling said coal to the Richmond and Danville Railroad Company ; that, while said Minetree told Ryan that he was purchasing agent of the ' Central railroad,' he did not tell him he was purchasing agent of the Central Railroad and Banking Company of Georgia. That said Ryan well knew that the Richmond and Danville railroad was then operating the Central lines under the lease, or color of the lease, of said lines to the Georgia Pacific Railway Company, and had been so informed by the officers of both the Central railroad and Banking Company of Georgia and of the Richmond and Danville Railroad Company. That, previous to the coal transaction upon which this suit was brought, an illegal combination, in restraint of trade, and an agreement to create a monopoly, was made between the Virginia & Alabama Coal Company, the Sloss Iron and Steel Company, the Corona Coal and Coke Company, the Little Warrior Coal and Coke Company operating coal mines in the State of Alabama, the Tennessee Coal and Iron Company, operating a coal mine producing

the largest output of coal in the State of Tennessee, and with other coal mines in the combination controlling, by reason of geographical situation, absolutely the coal supply necessary for the operation of the railroads in Georgia and the southeast seaboard of the United States. That said coal mining companies had illegally and corruptly agreed together, as above stated, that they would not sell the coal produced at their respective mines except each was to have certain railroads allotted to them as customers, and that thus, competition between the mines would be prevented and each mine would be enabled to force — the railroads compelled to resort to the respective mines to which they — assigned any price for coal supplied as might be demanded. That by said illegal combination, it was agreed by said mining companies, that the Richmond and Danville Railroad Company should not be sold any coal by the Virginia & Alabama Coal Company, but should be supplied only by the Sloss Iron and Steel Company.

110 "That it was the purpose of said combination to corner the coal supply of the railroads of the southeast seaboard, and, in the language of the president of the intervenor company, to 'squeeze' them out of a large advance in the price of coal over the ruling market price, and the market price which would otherwise have prevailed without such illegal combination."

That, in pursuance of such illegal agreement, the Sloss Iron and Steel Company did advance the price of coal to the Richmond and Danville Railroad Company from \$1.05 to \$1.12 per ton. That, thereupon, said Richmond and Danville Railroad Company applied to said Virginia & Alabama Coal Company to purchase coal from them, but the latter company, in pursuance of said illegal agreement, and for that reason, refused to supply said coal to the Richmond and Danville Railroad Company in its name at any price; but, in order to sell this coal which was to be used by the Richmond and Danville Railroad Company and at the same time to avoid the appearance of bad faith toward the other members of said illegal combination, and thus to keep the said combination of force, and to continue to reap the illegal fruits of the same, the president of the said Virginia and Alabama Coal Company accepted, but not in good faith, the assurance of Joseph Minetree, whom he knew to be the purchasing agent of the Richmond and Danville Railroad Company, that he, the said Minetree, was the "purchasing agent of the Central railroad" as authorizing him to make contracts for the Central Railroad and Banking Company of Georgia, and entered into the contract with said Minetree for the supply of coal @ 90c. per ton as if said coal was to be supplied to the Central R. R. & Bkg. Co. of Georgia, while he, the said president of said Virginia and Alabama Coal Company then and there well knew that said Minetree had no authority whatever to bind the Central Railroad and Banking Company of Georgia by any contract whatever, and said contract was made to purport on its face to be a contract for supply of coal to the Central Railroad and Banking Company of Georgia solely for the purpose of deceiving the other members of said illegal combination into the belief that said intervenor was

not selling to the Richmond and Danville Railroad Company any coal, and thus to prevent the collapse of said illegal combination.

111 In support of this exception, exceptors refer to the testimony reported by the master, as follows:

On the fact that the illegal combination in restraint of trade was made.

See testimony of J. R. Ryan, president of the Virginia and Alabama Coal Company, reported by master on pages 135 20, 21, 26, 27 and 28, and testimony of Thomas Seddon, 134 president of the Sloss Iron and Steel Company, reported by the master and attached to his report in that intervention. (Said testimony was taken by said intervenor as a part of their common cause at the same time, and it was understood that the said testimony would be applied to 312 either intervention, so far as the same was applicable.) See 313 pages 25, 26, 27 and 28.

On the fact that Ryan knew that Minetree was the purchasing agent of the Richmond and Danville Railroad Company.

307 See testimony of Ryan, above referred to, and testimony 308 of Seddon, as reported by master, pages 19 and 20.

On the fact that both companies knew that the Central Railroad and Banking Company was not operating its lines, but that they were being operated by the Richmond and Danville Railroad Company.

307 See citations under first exception, and Seddon's testimony, page 19.

That Minetree never was agent of the Central Railroad and Banking Company of Georgia, for any purpose.

45 See testimony of E. P. Alexander, page 1-2-3.

That he was in that transaction purchasing agent of the Richmond and Danville Railroad Company.

48 See the exact copy of the agreement of July 13th, 1891, attached to "Exhibit A" to intervenor's intervention.

Third exception. Exceptors except to the seventh finding of fact made by the master, that intervenor delivered along the lines of the Central Railroad and Banking Company of Georgia coal as follows:

"Between July 13th, 1891, and March 4th, 1892, 22,653 tons; subsequent to March 4th, 1892, 6,857 tons."

And say that said finding is erroneous and contrary to the evidence.

Whereas, said master should have found as follows:

112 That intervenor, prior to March 4th, 1892, in pursuance of a contract made with Joseph Minetree, purchasing agent of the Richmond and Danville Railroad Company, delivered 4,530,700 pounds (22,653 tons) of coal to the Richmond and Danville Railroad Company, at the mines, consigned to superintendents of the Richmond and Danville Railroad Company, operating lines of railroad, some of which belonged to the system of the Central

Railroad and Banking Company of Georgia. That the said coal was carried by said railroad and delivered at the places and lines of railroad herein below stated, that is to say :

Points on Central Railroad and Lines Leased to the Central Railroad and Banking Company.

	Pounds.
Savannah	10,465,900
"	204,300
Atlanta	892,000
"	293,500
Augusta	4,632,100
95-mile post	50,800
Sebastopol	50,600
"	5,662,900
"	232,000
Macon	40,400
"	355,800
"	11,202,600
Gordon	40,500
Wadley	51,300
"	100,000
Cameron	50,000
Troy, Ala. (M. & G.)	322,600
Brantley	90,000
Smithville (So. West.)	50,700
"	722,700
Albany	770,700
Fort Gaines	50,900
Fort Valley	150,600
113 Americus	131,500
Savannah and Atlantic railroad	91,200
Eufaula (So. West.)	40,700
"	709,400
Union Springs, Ala. (M. & G.)	81,600
	<hr/>
	37,537,300
	Tons: 18,768.65

Points on Savannah and Western railroad :

	Pounds.
Columbus	52,600
"	456,900
"	3,153,000
Cedartown	303,900
Between Birmingham and Columbus	410,000
Chattanooga	448,600
Griffin	233,200
"	52,500
	<hr/>
	4,741,700
	Tons · 2,370.35

Points on the Port Royal and Augusta railroad:

	Pounds.
Port Royal.....	294,600
	Tons: 147.30

Points on the Port Royal and Western Carolina railroad:

McCormick ...	523,200
Spartanburg.....	480,300
	<hr/>
	1,003,500
	Tons: 501.75

Miscellaneous:

	Pounds.
Stillwell (on south-bound railroad).....	143,400
Crystal Ice Company	40,700
Ryder	338,600
114 Georgia Midland railroad....	120,000
Col. Southern	202,500
Muscogee Mills.....	50,000
	<hr/>
	895,200
	Tons: 447.60

Coal which was not traced further than its delivery to the Richmond and Danville Railroad Company at the mines: 838,300 pounds or 419.15 tons.

Recapitulation.

	Tons.
Unloaded on Central railroad and leased lines.....	18,768.65
" " Savannah and Western railroad.....	2,370.35
" " Port Royal and Augusta railroad.....	147.30
" " Port Royal and West Carolina railway...	501.75
" to miscellaneous corporations.....	447.60
Unaccounted for.....	419.15
	<hr/>
	22,654.80

That it was the practice of the Richmond and Danville Company where lines of railroad of the Central Railroad and Banking Company of Georgia, operated by it, came in contact with other lines not belonging to the Central system, but which were likewise being operated by the Richmond and Danville Railroad Company to coal both lines, at the junction point, from the same bins; and that from the bins which supplied the Central railroad at Augusta, Georgia, the trains of the Port Royal and Augusta railroad; Port Royal and Western Carolina railroad; and the Charlotte, Columbia and

115 Augusta railroad, were coaled to the following amounts from the 1st of October, 1891, to the time the receiver was appointed and took charge in this cause, to wit:

	Tons.
Port Royal and Augusta.....	1,518
Port Royal and Western Carolina	6,110
Charlotte, Columbia and Augusta	2,124
	<hr/>
	9,752

If this be apportioned between the Virginia and Alabama Coal Company, the Sloss Iron and Steel Company, the Corona Coal and Coke Company, the Little Warrior Coal Company, in the ratio of their agreement, (page 66 of Master's Report) the Virginia and Alabama's proportion of the coal so used by these companies would be 53.67 per cent., so that we would have coal of the Virginia and Alabama Coal Company, used by roads other than the Central railroad from Augusta bins:

	Tons.
By Port Royal and Augusta railroad.....	814.71
By Port Royal and Western Carolina railway... ..	3,279.24
By Charlotte, Columbia and Augusta railroad	1,139.95
	<hr/>
	5,233.90

Herein In support of the foregoing exceptions, exceptors refer to
 168 the report of the experts appointed by the intervenor, design-
 186 ated as report No. 1, sheets 4, 13 and 21; and to the testi-
 208 mony of C. H. Schooler, the expert appointed by inter-
 147 venor, reported by the master, pages 48 and 49, Master's
 Report, as follows:

"This report shows the amount of coal delivered to the different divisions prior to and including March 4, 1892, and shows 45,307,700 pounds. \$44,100 pounds of that could not be located. We could not get the exact unloading date, or where they were unloaded. It was more than likely that those cars, we judge, were carried on work-trains and no record of them was kept at all."

116 Reference is also made to the testimony of C. H. Schooler,
 page 14, of the Master's Report on the Sloss Iron and Steel
 Herein Company, intervention to the effect that the experts' report
 303 only undertook to show the amount of coal unloaded at
 230 the places and times shown on their reports and not how
 or by what road the coal was used.

As to the amount of coal used from the Augusta bins by the Port Royal and Augusta railroad; the Port Royal and Western Carolina railroad; and the Charlotte, Columbia and Augusta railroad, reference is made to the testimony of S. R. Sherm, referred to in the supplemental report of the master.

Exceptors further say that the said master, in his said seventh finding of fact relative to coal unloaded after March 4, 1892, should have found as follows:

That, of the coal shipped by intervenor, under said contract with Joseph Minetree, the following amounts were unloaded after March 4th, 1892, at the following places and on the following railroad lines, to wit:

Points on Central Railroad and Leased Lines.

	Pounds.
Savannah.....	2,601,000
Wadley	235,000
“	93,200
Sebastopol.....	2,107,200
Atlanta	1,009,600
Macon	1,640,700
Augusta.....	1,156,900
Eufaula	40,500
Americus.....	50,100
Smithville.....	384,700
Albany.....	90,400
“	50,400
Fort Gaines... ..	50,000
Union Springs... ..	40,800
Fitzpatrick.....	40,100
Troy.....	41,000
Waynesboro	42,000
	<hr/>
	9,673,600
	Tons: 4,836.80

117 *Points on the Port Royal and Augusta railroad:*

Port Royal.....	262,100 pounds.
	131.05 tons.

Points on Port Royal and Western Carolina railroad:

Spartanburg	293,300 pounds.
McCormick	131,600 “
	<hr/>
	424,900 pounds.
	212.45 tons.

Points on Georgia Midland railroad	50,700 pounds.
	25.35 tons.

Points on the Savannah and Western railroad:

Cedartown	720,100 pounds.
Cedartown	91,400 “
Carrollton.....	228,000 “
Rome.....	47,000 “
Chattanooga.....	586,600 “
Griffin.....	1,044,800 “
Columbus.....	586,300 “
	<hr/>
	3,304,200 pounds.
	1,652.10 tons.

Recapitulation.

Coal unloaded on Central R. R. and leased lines...	4,836.80 tons.
“ “ “ S. & W. R. R.....	1,652.10 “
“ “ “ P. R. & A. R. R.....	131.05 “
“ “ “ P. R. & W. C. R. R....	212.47 “
“ “ “ Ga. Mid. R. R.....	25.35 “
	<hr/>
	6,857.75 tons.

Herein 118 In support of this point of the exception, reference
 210 is made to the report of the said experts, designated
 211 as report No. 2, consolidated statements on sheets 3 and 4.
 And, whereas, said master, in his seventh finding of fact,
 should have found that the amount of coal on hand on March 4th,
 1892, in the bins of the various railroads to which intervenor's said
 coal had been shipped, was as follows:

Coal in bins on Central railroad and leased lines March 4th,
 1892:

	Tons.
Savannah.....	2,501
Atlanta.....	31
Augusta.....	285
Macon ..	5,836
Smithville.....	250
Sebastopol.....	44
	<hr/>
	8,947

Coal in bins on Savannah and Western railroad March 4th,
 1892:

	Tons.
Columbus.....	2,252
Kellyton.....	2,673
	<hr/>
	4,925

(For proportion of Virginia and Alabama Coal Com-
 121 pany, see *post* page 17.)

In support of this point of the exception, reference is
 243 made to the — experts designated as report No. 3, and to
 349 the affidavit of R. L. Shaw, Master's Report, page 74.

Fourth exception. Exceptors except to the ninth finding
 of fact made by the master, as being erroneous, and in support of
 this exception, reference is made to the evidence referred to under
 the third exception above.

119 Fifth exception. Exceptors except to the eleventh finding
 of fact, as made by the master, in so far as he finds a delivery
 of the coal sued for at Savannah, Columbus and Augusta, and say
 that said finding is erroneous, and that said master should have

found that, while said coal, in part, was nominally consigned to superintendent of the Richmond and Danville Railroad Company, at Savannah, Columbus and Augusta, said coal was delivered to the Richmond and Danville Railroad Company at the mines, and that said Richmond and Danville Railroad Company used the same on whatever lines of railroad it saw proper, and not alone on the lines of the Central railroad, which it was operating.

In support of this exception, reference is made to the evidence cited under the third exception.

Sixth exception. Exceptors except to the twelfth finding of fact made by the master.

"That the four coal companies, to wit: the Virginia and Alabama Coal Company, the Sloss Iron and Steel Company, the Corona Coal and Coke Company and the Little Warrior Coal Company, alone furnished the coal that was found in the bins of the Central Railroad and Banking Company of Georgia, and by the receivers of said corporation appointed by this court;" and say that said finding is not supported by the evidence, and is erroneous.

In support of this exception, reference is made to the fact that only one witness, C. H. Schooler, the book-keeper of the Sloss Company, and expert appointed by them, testified relative to the matter, and not from his own knowledge, but from his examination of the

books of the Richmond and Danville Railroad Company, Herein in the hands of the receiver, and his testimony on this
153 point is as follows. (Testimony, March 10th, 1893. See Master's Report, page 56):

"Q. Did you ascertain whether or not there was coal bought from other companies than your company, by the Richmond and Danville Railroad Company during the time it was operating the Central railroad?"

"A. Yes, sir; in going over the records I found where they got coal from other companies.

"Q. Of this coal in the bins then, on March 4th, there was no definite way of ascertaining from whom that coal had been bought?"

"A. No, sir."

Herein 120 Again, when recalled by intervenor, on May 5th,
159 1892, as reported by master, on pages 68 and 69 of
229 Master's Report, he testified as follows, under cross-examination:

"Since you mention it, I think I saw the name of the Tennessee Coal and Coke Company also on the books of the Central; there may have been other Tennessee mining companies selling coal to the Central, but I only recollect the one just mentioned, the Tennessee Coal and Coke Company."

Exceptors except to the report by the master, on page 69 of what he designates the testimony of the witness, "in substance," because there was no consent that the testimony of the witness "in substance" should be reported; and that statement was not read over or signed by the witness, nor seen by exceptor's counsel

59 before said report was made and because on page 68 of

said report, just exactly what the witness did testify on this point is fully reported as taken down verbatim.

Exceptors further say that said master, in his fifth finding of fact, should have found as follows :

That at the time, June, 1891, when the Central Railroad and Banking Company of Georgia ceased to operate its lines, and the Richmond and Danville Railroad Company went into possession and commenced to operate the same, there was a large amount of coal of the Central Railroad and Banking Company of Georgia in the bins on its lines. That, during the time it held possession of said lines, the Richmond and Danville Railroad Company bought large quantities of coal from this intervenor, and others, some of which was paid for, and placed the same in said bins; and during said time having used coal from said bins that the presumption is that the coal in the bins of the Central railroad on March 4th, 1892, was the coal left in the same by the Central Railroad and Banking Company when the Richmond and Danville railroad took possession, or coal bought by the Richmond and Danville Railroad Company for replacing that of the Central used by it. That the burden of proof being on intervenor to show that the coal in the bins was their coal, they have failed to make out that fact. That, even if said four mining companies alone had furnished coal to the Richmond and Danville for the Central lines, no basis of a division of the coal in the bins could be arrived at without taking into consideration the coal of the Central left in the bins before the

121 Richmond and Danville's possession, and also the coal furnished by said four intervenors which was paid for, and apportioning a part of the contents of the bins to that. And that, even if said intervenors are entitled to have the receiver of the Central Railroad and Banking Company pay them for the coal in the bins of the Central railroad, in proportion to the amount of their unpaid claims, in accordance with the agreement among themselves made by said intervenors, yet it would only be the coal in the Central Railroad bins, and not in the bins of the Port Royal and Augusta Railroad Company, the Port Royal and Western Carolina Railway Company and the Savannah and Western Railroad Company.

Herein And whereas, said master should have found that, under

118 the agreement of November 26th, 1892, between said coal

229 companies (Master's Report, page 66), the Virginia and

Alabama Coal Company was to have 53.67 per cent. of the amount recovered for coal in the bins on March 4th, 1892, which would make for the Virginia and Alabama Coal Company's proportion, (see page 13 of these exceptions), coal in the bins of Central railroad and leased lines:

53.67 per cent. of 8,947 tons—4,801.85 tons.

Coal in bins of Savannah and Western railroad :

53.67 per cent. of 4,925 tons—2,643.24.

So that, if that apportionment should be adopted, the amount of coal which is being sued for, used by the various railroads, would be shown as follows :

Consolidated Statement of the Disposition of the Virginia and Alabama Coal Co.'s Coal.

	Tons of coal unloaded prior to March 4, 1892. See page 9 of exceptions.	Tons of coal in bins on March 4, 1892. See pages 13 and 17 of exceptions.	Tons of coal from C. R. R. bins used by other roads prior to March 4, 1892. See page 10 of exceptions.	Tons of coal unloaded subsequent to March 4, 1892. See pages 14 to 16 of exceptions.	Tons of coal used on various roads prior to March 4, 1892.	Tons of coal used on the various roads subsequent to March 4, 1892.	Value of coal used on the various roads prior to March 4, 1892, at 90 cents per ton.	Value of coal used on the various roads subsequent to March 4, 1892, at 90 cents per ton.
C. R. R.	18,708.65	4,801.85	52.34	4,836.80	8,732.80	9,638.65	\$7,859.52	\$8,674.79
S. & W.	2,370.35	2,643.24	.....	1,652.10	.....	4,295.34	.....	3,865.81
P. R. & A.	147.30	.....	815	131.05	962.30	131.05	866.07	117.95
P. R. & W. C.	501.75	.....	32.79	212.45	3,780.75	212.45	3,402.67	191.21
C., C. & A. and miscellaneous not C. R. R.	447.60	.....	11.40	25.35	1,587.60	25.35	1,428.84	22.82
Unaccounted for	419.15	.....	.....	.....	419.15	.....	377.24	.....
Totals	22,634.80	7,445.09	.....	6,857.75	15,482.60	14,302.84	\$13,934.34	\$12,872.58

Sixth exception. Exceptors except to the fourteenth finding of fact made by the master, and say that the same is erroneous, in this, that there is no evidence to support the conclusion made by the master that the coal in the bins and unloaded, after March 4th, 1892, at various points on the Port Royal and Augusta railroad, the Port Royal and Western Carolina railroad, and the Savannah and Western railroad, were, in fact, used by the receivers of the Central Railroad and Banking Company of Georgia; it affirmatively appearing from the record that each of said roads belongs to independent corporations, with separate directors and organization, and each having its own liabilities and separate mortgage creditors, and each having had receivers appointed for them as properties of separate corporations, and each being now, as shown by the record, administered under separate receiverships from that of the Central Railroad and Banking Company of Georgia.

See evidence referred to under third exception on this point on page 10 of these exceptions.

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Exceptions to Master's Conclusions of Law.

Seventh exception. Exceptors will admit the correctness of the principle cited by the master in his first finding of law, "that a railroad corporation which leases its lines to another corporation is liable for damage occasioned by a failure of the lessee company to properly operate the road or for failure of the lessee company to properly perform any of the functions the performance of which is imposed by law for the benefit of the public;" yet except to the application of said principle to the case of supplies furnished by private persons to the lessee company under contract with it; and exceptors say that the duty to pay for such supplies is a matter of private contract between the parties thereto, and is not a public duty, or a duty imposed on the corporation, for the benefit of the public; and therefore, under a contract with a lessee company, there could be no recovery against the lessor for supplies used by such lessee company on such leased road.

And exceptors further say that, if the court should be of the opinion that the lease of the Central Railroad lines to the Georgia Pacific Railway Company, under color of which the Richmond and Danville Railroad Company took possession, was illegal and void, or that the Richmond and Danville took possession of the Central lines without any shadow or color of right, such taking possession of a quasi-public corporation would be against public policy, and the Richmond and Danville Railroad Company by itself, or through its officers, could not become the agents of the Central Railroad and Banking Company, to make contract for it, binding on the Central,

but such contracts would be void. While the Central Railroad and Banking Company may be liable for its failure to perform its duty to the public by running its own trains, and permitting the Richmond and Danville to run them and commit injuries thereby contracts made by the latter for the purpose of carrying on such illegal operation would not be enforced against the Central Railroad and Banking Company.

Exceptors except to the finding of the master that "the statement of Joseph P. Minetree to J. R. Ryan, the president of the intervenor company, that he was authorized to purchase for the Central Railroad and Banking Company of Georgia," could have the effect to make said contract a contract of the Central Railroad and Banking Company of Georgia. It appearing affirmatively by the evidence that said Minetree was not, in fact, the agent of the Central Railroad and Banking Company, but purchasing agent of the Richmond and Danville Railroad Company. And it appearing affirmatively by the evidence that said intervenor at the time of making said contract, had full notice, by public notoriety, press comments, and statements made to it by officers of both the Central railroad and the Richmond and Danville Company that the former had ceased to operate its line of railroad, and that the latter was operating the same. And they except to the statement of the master in the finding that J. R. Ryan testified that Minetree stated to him at the time of entering into the contract, that he was authorized to purchase for the "Central Railroad and Banking Company of Georgia," whereas, said Ryan testified only that Minetree was "purchasing agent of the Central railroad," and signed said contract as "purchasing agent," on a letter-head containing a statement of his position as "purchasing agent of the Richmond and Danville Railroad Company," and, whereas, said master should have found that said Ryan fully understood at the time that he was contracting with the Richmond and Danville Railroad Company, but made contract in such form as to make it appear that the coal was to be furnished to the Central Railroad and Banking Company of Georgia, in order to enable intervenor to continue of force and carry out an illegal scheme and contract in restraint of trade, and monopoly of the railroad coal supply of the southeast seaboard of the United States.

Eighth exception. Exceptors except to the third finding of law made by the master, that the coal used by the Richmond and Danville Railroad Company, previous to March 4th, 1892, in the operation of the lines of the Central Railroad and Banking Company of Georgia, were supplies for keeping the road "a going concern" and constitute a "preferential debt" within the meaning of the rule in *Fosdick vs. Schall*, 99 U. S., page 235.

Whereas said master should have found that the rule in *Fosdick vs. Schall* was merely that the debt of an insolvent railroad company created by it for supplies furnished it to keep it a going concern, would be given the dignity of a lien of higher dignity than a mortgage on the road, and that such rule does not create a debt on the corporation owning the road, but merely gives rank to an existing debt. And, whereas, said master should have found that the coal

furnished by intervenor to the Richmond and Danville Railroad Company, was used by it prior to March 4th, 1892, in the operation of the lines of the Central Railroad and Banking Company of Georgia, was a debt of the Richmond and Danville Railroad Company, and not of the Central Railroad and Banking Company, and that neither the latter company, nor its receivers appointed on March 4th, 1892, or since, are liable for the said coal at all.

And whereas said master should have found that the coal furnished by intervenor previous to March 4th, 1892, which was unused and on hand in the bins on March 4th, 1892, had, previous thereto been actually sold by intervenor on thirty days' time, and upward, and actually delivered to the Richmond and Danville Railroad Company at the places to which consigned, and that the Richmond and Danville Railroad Company had actually placed the same in bins of the Central Railroad and Banking Company of Georgia, in place of similar coal of the latter company used by the former out of said bins, and that said coal had become commingled with the coal of the Central Railroad and Banking Company of Georgia, in said bins, in such a way as to be indistinguishable; that, by the unloading of said cars by the consignee, even the right of stoppage *in transitu* had ceased and all title had passed out of the intervenor.

And whereas said master should have found that, if said intervenor can recover against these exceptors, at all, for any of said coal, it could only be for such coal as was stopped by the receiver of the court, *in transitu*, before its delivery to the Richmond and Danville Railroad Company, at its destination, and unloaded into the Central Railroad bins after the appointment of the receiver, and then only on the idea that the title of the coal had not been completely divested from the intervenor at the time that the receiver took
125 charge, and that the coal having been used by the receiver, there is an implied assumpsit to pay its value; and, as the coal was brought over the lines of the Central, and Savannah and Western, that value would be the value at the mines.

But exceptors submit that as the coal was actually sold to the Richmond and Danville Railroad Company, on time, and there was an actual delivery to that company, at the mines, said coal should be looked upon as coal returned by the Richmond and Danville Railroad Company for that borrowed from the Central, and the intervenor should be required to look to the Richmond and Danville Railroad Company, with whom it contracted, for payment.

Ninth exception. Exceptors except to the master's sixth finding of law, giving judgment against the Central Railroad and Banking Company for \$26,607.44—the entire amount sued for, and against H. M. Comer, receiver of said Central Railroad and Banking Company of Georgia, for the same amount, less the sum of \$5,543.10, allowance made in his supplemental report for coal used by other roads out of the Central Railroad bins at Augusta, and for cars transferred to said roads.

Exceptors say that said finding is erroneous in this, that said master should have found that said Central Railroad and Banking

Company is not liable at all; but, if liable, then the amount of the liability would be shown as follows:

First Case.

If the court should be of the opinion, that the Central Railroad and Banking Company, and its receiver, was only liable for coal unloaded after March 4th, 1892, on the Central railroad, and lines leased by the Central Railroad and Banking Company of Georgia, and that H. M. Comer, as receiver of the Savannah and Western Railroad Company, and the latter company, was liable for coal similarly unloaded on that line after March 4th, 1892, then the finding of the court would be:

Against the Central Railroad and Banking Company of Georgia, and the receiver for 4,836.80 tons—\$4,353.12.

Against the Savannah and Western Railroad Company and its receivers for 1,652.10 tons—\$1,486.89.

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Second Case.

If the court should be of the opinion that the Central and Savannah & Western should be held liable for the proportion of the coal in the bins on those lines on March 4th, 1892, as well as for the coal unloaded after March 4th, 1892, then the finding should be as follows:

Against the Central Railroad and Banking Company of Georgia and its receivers for 9,638.65 tons—\$8,674.19.

Against the Savannah and Western Railroad Company and its receivers for 4,295.34 tons—\$3,865.81.

Third Case.

If the court should be of the opinion that the Central Railroad and Banking Company of Georgia or the Savannah and Western Railroad Company should be held liable for coal used on said lines prior to March 4th, 1892, by the Richmond and Danville Railroad Company operating said respective lines, as well as for the coal in the bins and the coal unloaded after March 4th, 1892, on said lines, but not liable for the coal used on the Port Royal and Augusta and Port Royal and Western Carolina and the Charlotte, Columbia and Augusta, and for coal shipped by the intervenor, but not traced further than its delivery to the Richmond and Danville Railroad Company, then the finding of the court would be as follows:

Against the Central Railroad and Banking Company of Georgia and its receiver for 18,371.45 tons—\$16,534.31.

Against the Savannah and Western Railroad Company and its receiver for 4,295.34 tons—\$3,865.81.

LAWTON & CUNNINGHAM,
MARION ERWIN,

*Solicitors for H. M. Comer, Receiver Central Railroad
and Banking Company of Georgia, and for Central
Railroad and Banking Company of Georgia.*

127 Endorsement: In U. S. circuit court, southern district of Georgia. Rowena M. Clarke *et al.* vs. Central Railroad and Banking Company of Georgia *et al.* Bill, etc. Dependent bill. Intervention of Virginia and Alabama Coal Company. Exceptions to master's report. Filed August 5th, 1893. L. M. Erwin, deputy clerk.

In the Fifth United States Circuit Court, Western Division, Southern District of Georgia.

ROWENA M. CLARKE <i>et al.</i>	} In Equity. Bill, etc. Intervention of the Virginia and Alabama Coal Company.
<i>vs.</i>	
CENTRAL RAILROAD AND BANKING COMPANY OF GEORGIA.	

Evidence Before Special Master Warren D. Nottingham, Esquire.

Pursuant to notice given to counsel in above-stated cause master called the same for the purpose of taking testimony and hearing argument, on this the 7th day of October, 1892, at 10 a. m., in the court-room of said court.

Appearances.

Hill, Harris & Birch; Steed & Wimberly, for compl't.
Lawton & Cunningham; Marion Erwin, for the Central railroad.
J. R. Lamar, for the Richmond and Danville railroad.

Evidence on the part of the Virginia and Alabama Coal Company.

128 Examined by Mr. HILL:

Mr. J. R. RYAN, being sworn for intervenor, testified:

Q. Mr. Ryan, state what is your position with the intervenor here

A. I am general manager of the company; have charge of all of their forces.

Q. You were addressed in this contract as vice-president and general manager?

A. Yes, sir.

Q. That your position?

A. I am not the vice-president now.

Q. Was that your position?

A. Yes, sir; at that time.

Q. On the 13th of July, 1891?

A. Yes, sir.

Q. Mr. Ryan, at the time this contract of July 13th, 1891, for purchase of coal was made, state how the Central railroad was being operated?

A. Well, I do not know much about that, except in making contracts. I had had an agreement with the mines that I would not bid on coal for the Richmond and Danville; was going to squeeze them a little, and I told them I would not bid on it. Captain Green

came to me and asked me if I would not bid on the Central. I told him I would not, fearing my bid would become known to the Richmond and Danville and they would not give me contract, but I would get their ill will. I said if you will make me a proposition as to what you will give me, I will tell you whether I will accept it or not. He made proposition and told me to come to Washington and he would get up papers. He wrote it out in the name of the Richmond and Danville railroad, and I told him I was compelled to reject it. He told Mr. Minetree, and said, "You can contract with the Central," and that is all I know about it.

Q. Who was Mr. Minetree—in whose office?

A. In adjoining office to the general manager of the Richmond and Danville railroad. I think that he was purchasing agent. He told me he was purchasing agent of the Central railroad also, or he would not have signed it, because I would not have accepted it as being made by the Richmond and Danville.

129 Q. The contract in form like this was written after the conversation that you have just repeated with the general manager?

A. Yes, sir.

Q. Mr. Ryan, examine these shipping tickets attached and state whether they are copies or original shipping tickets.

A. There are several; shall I look at them all?

Q. No, sir.

A. Well, they are original signatures. That is our custom, taking them that way and having them signed after that impression has been made. The signatures are original.

Q. Then they are original shipping tickets, showing it to be for coal delivered at the mines?

A. Yes, sir.

Q. State whether the coal described in these tickets was shipped or not in pursuance of that contract?

A. It was; yes, sir. I can tell you how that was done, Mr. Hill. I received a letter, which was misplaced. We moved office and a great many letters were misplaced. McBee wrote me a letter stating that the general manager had instructed him to order coal from me and he would give division superintendents instructions and they send them to me. Division superintendents sent by telegraphic dispatches and letters orders for coal.

Q. Well, then, from whom did the orders come, on which you shipped coal from time to time?

A. From the division superintendents of the Central Railroad of Georgia.

Q. Do you know, or not know, that during the period of these shipments the Richmond and Danville had leased the Central railroad?

A. I know what I heard about them.

Q. Well, heard from whom; from the Central officials and the Richmond and Danville—both or either?

A. Well, I heard from both.

By Mr. ERWIN: Mr. Hill, didn't you ask whether he heard in writing?

By Mr. HILL: No, not in writing; asked whether he was informed by officials of the road of the fact that it was leased.

130 Q. You have examined the accounts attached, have you?

A. Yes, sir.

Q. State whether or not the amount shown by those accounts is still due and unpaid?

A. They are.

Q. And also state whether those accounts are correct?

A. Yes, sir; they are correct. I have worked several days on them myself.

By the COURT: What is the principal, Mr. Hill, of the claim?

By WITNESS: About twenty-six thousand dollars.

By Mr. HILL: Twenty-six thousand dollars?

By WITNESS: Twenty-six thousand dollars—some odd dollars.

By WITNESS: Twenty-six thousand six hundred and seven dollars and forty-four cents.

Q. Mr. Ryan, you have spoken of orders for shipments of coal coming from division superintendents. How much coal did they keep on hand in advance of orders?

A. Well, sometimes they had a great deal more than at others.

Q. Well, generally, on the average?

A. They generally kept from two to three weeks' supply, so far as we were informed and posted. Sometimes, though, they had a great deal more than that. In the busy season of the year these railroads were busy, coal mines were busy, and we do not ship coal as much as we do in the dull season, because railroads want to haul it then and the coal mines want to ship it then. About the time the railroad went into the hands of receiver——

Q. The Central, you mean?

A. The Central. They must have had a great deal of coal. I was at Savannah and they had a great — of coal on hand, and at all other points, and it is natural they would have had a great deal, because the times were dull and the railroads wanted to haul it to stock up with.

131 Q. Then the shipments had been larger than the average shortly prior to the receivership?

A. Yes, sir. There is some coal there which must have reached the receiver after he took charge.

Q. Well, before we come to that, how many tons of coal per day was necessary under that contract, to supply these different divisions?

A. Well, between eight and nine hundred tons per day.

Q. And, according to the shipments, how much would you say, or about, was on hand at the time of the receiver on the 4th of March—what quantity?

A. Well, that is something——

Q. I mean supply—I just want to find out for what period they had supply on hand?

A. I could not tell, but they certainly must have had in transit and on hand as much as twelve thousand tons.

Q. I find in examining these shipping tickets and the account, that coal was shipped continuously from, say the 15th of February on to the 4th of March. State how long it required for cars shipped from the mines to be delivered to these points of delivery.

A. Well, an average delivery on the road would be about six or seven days. That is the time they should be if the road was properly handled. It might have been longer than that.

Q. Then you would state that cars of coal that left the mines, say after the 25th or 26th of February, were not received until after the receivership?

A. No, sir; that is after date of billing. Very frequently we load coal during the day and take agent's receipts in the evening, and then they will probably leave there the next day, and, altogether from the time we take the receipt would be about a week, I should imagine.

Q. What was your coal worth now, at the different points. I am speaking now, outside of the contract and adding the freight? What was your coal worth at Augusta?

A. Coal there was worth—you mean according to the contract price?

Q. No; I mean, assuming that we—assuming that the intervenor here would have the right to charge the receivers of the Central railroad with the real value of the coal?

132 A. About \$3.38 at Augusta; \$2.65 here; \$3.10 at Savannah; about \$2.65 at Kellyton; \$1.95 at Craven.

Q. How much at Atlanta?

A. \$2.20.

Q. How much at Columbus?

A. \$2.65.

Q. Did you mention a place called Sebastopol?

A. I did not mention it. I never shipped coal there.

By Mr. ERWIN:

Q. What position did you hold with the Alabama Coal Company?

A. Do you mean now or when the contract was made?

Q. Well, when the contract was made.

A. I was vice-president and general manager when the contract was made.

Q. What position now?

A. General manager.

Q. Where was your office at the time that you entered into this contract upon which you base your action?

A. My office or the office of the company?

Q. Your office in connection with the company's.

A. In Birmingham.

Q. Your office in Birmingham?

A. Yes, sir.

Q. Had your company supplied the Central Railroad and Banking Company of Georgia with coal previous to the lease in June, 1891, to the Richmond and Danville Railroad Company?

A. I do not know, sir; I do not think we had; I do not remember.

Q. Had you supplied the Richmond and Danville previous to that time?

A. Yes, sir.

Q. General Manager Green, to whom you referred, was general manager of the Richmond and Danville, was he not?

A. Yes, sir; what my brother referred to. You mean at the time I supplied the company?

Q. Well, before the lease of the Central railroad?

A. He was from a certain period. He has not always been.

Q. Just before then, you had contracted with him previously?

A. Never contracted with him for the Richmond and Danville railroad. I made contract with Colonel Colquitt once
133 for the Richmond and Danville.

Q. He was purchasing agent, or what?

A. Vice-president.

Q. Well, now, who was the first man that approached you about making this contract?

A. It was Mr. Ryder, of the Georgia Pacific railway.

Q. Well, who was the next one? Who was the one you entered into all the preliminary agreements that you made before you went to Washington and entered into written contract? Was it Mr. Ryder?

A. I believe Mr. Green had a great deal of the contracting matter. Of course, the preliminary matter was with Mr. Green; at the same time the details of it had gone before him; the idea of it had gone before him to Mr. Ryder.

Q. State, if you please, what was this reason urged why the contract should not be made in the name of the Richmond and Danville railroad. What was the reason that you objected to taking contract in the name of the Richmond and Danville?

A. Because I had gone in combination not to sell coal to the Richmond and Danville.

Q. You mean that other coal mines—

A. The other coal mines had agreement to squeeze, and I had entered into that, and did not like to squeeze the Central.

Q. Let's understand what you mean by that. You mean that certain other coal mines and others had entered into an agreement not to sell to the Richmond and Danville any coal below a certain figure, or you were not to sell at all?

A. I was not to sell at all.

Q. And the other mines, I suppose, were to supply them and squeeze them?

A. That is it.

Q. But didn't have that combination against the Central?

A. They had it, but left me out.

Q. You were left out on the Central?

A. I was left out on the Central. They didn't think our mine was large enough to supply them, and they left me out.

Q. Who did you tell you could not supply the Richmond and Danville in its name?

134 A. Captain Green, Mr. Ryder and a dozen others, I suppose. I wanted them to understand. I wanted to stick up to my moral obligations and told all of them.

Q. Well, now, who told you that they would take the contract in the name of the Central?

A. Nobody; I told them I would not take it any other way. I said: "If you cannot make it in the name of the Central Railroad of Georgia, I cannot contract with you." I was very explicit, because I expected to have trouble with the coal mines.

Q. General Manager Green told you he wanted it to use along the lines of the Central Railroad of Georgia?

A. I did not enter into details with him. I signed contract and left.

Q. You went on to close contract in Washington city?

A. I had begun to ship before I closed it.

Q. I mean to say you went on to Washington city to get them to sign the contract?

A. I had begun shipping coal already.

Q. Then that order was taken for what purpose?

A. What order?

Q. That letter—whatever you say you have got there.

A. That was taken. They wanted to bind me up. I did not care about taking anything. They wrote that letter and asked my acceptance of same, which I gave them.

Q. The first letter, you say, was signed for the Richmond and Danville Railroad Company?

A. Well, I never got any first letter; never got but that one letter.

Q. Didn't you state in your direct examination they wanted to give you—

A. They wanted to give me a letter, but I would not take it.

Q. For the reason that the Richmond and Danville was out of this—was cut off by this agreement that you had with the other companies?

A. Yes, sir.

Q. Did you know, at that time, or was it your understanding at that time, that the Richmond and Danville was operating the lines of the Central Railroad of Georgia under a lease?

135 A. Well, that was my understanding; yes, sir. I did not know the nature of the lease. I certainly did not take the contract with the understanding that it was the same thing. I was honest and sincere in making my contract with them, because I had moral obligations that I would not have violated otherwise.

Q. Where was General Manager Green's headquarters at the time you made it?

A. At Washington city.

Q. That was the headquarters for the Richmond and Danville Railroad system ; was it ?

A. Yes, sir ; I reckon so.

Q. Do you know whether Joseph Minetree was ever general purchasing agent for the Central Railroad of Georgia ?

A. No more than what that states, sir. I do not know that he was not or that he was, more than that letter states.

Q. You thought he had got some power through that lease ?

A. I did not think anything about that. I did not take the time to think about it. Told him if he could not sign it as purchasing agent of the Central railroad, I did not want him to sign it at all. I said if you cannot contract with the *the* Central railroad, I cannot contract with you. So, I presume he was purchasing agent.

Q. Where was this coal shipped from ?

A. Shipped from Day's Gap.

Q. This contract, I see, was dated July 13th, 1891. I will ask you whether or not along during that year, from July 13th, 1891, to January 1st, 1892, you had shipped other large amounts of coal under that contract.

A. From July 1, 1891, to July, 1892 ?

Q. To January 1st, 1892—had you shipped—

A. We had shipped a good deal.

Q. Who paid for it ?

A. Didn't anybody.

Q. Well, that for which you did get pay ?

A. That was paid for by somebody in New York city. I don't know who.

Q. Don't you know that it was paid by the Richmond and Danville people ?

A. I could guess, but I do not know.

136 Q. Didn't you know your checks came ?

A. Never got any checks.

Q. Got money in cash ?

A. There was draft drawn by Mr. Hall, treasurer of the Richmond and Danville railroad, and the Central railroad ; I suppose he kept the Central money, too. I don't know who was treasurer, but he drew draft on No. 80 Wall street, and didn't know who it was on, but it was paid, and draft stated that letter would state to whose account to pay.

Q. Didn't you get a voucher for it from the Richmond and Danville railroad, with stamp across the face of it ?

A. Sir ?

Q. Didn't you get voucher from the Richmond and Danville Railroad Company, with stamp on it, making it a sight draft ?

A. No, sir ; never did.

Q. You drew the draft yourself, didn't you ?

A. No, sir ; we never got a full settlement. I would go to the treasurer, Mr. Hall, who, I suppose, was treasurer for the Richmond and Danville and treasurer for the Central ; but I have asked him for money.

Q. Where was office ?

A. In Atlanta. He said he could not give me money, and he gave me draft, about six months long, which went to New York, and accepted.

Q. You had that transaction with him, amounting to how many dollars?

A. Well, I could not tell you. I could not approximate it.

Q. Does the account show it?

A. I do not know.

Q. Many thousand dollars, was it?

A. Yes, sir; I suppose something like seventy-five or eighty thousand.

Q. And you tell me, now, that you got those checks and drafts from Mr. Hall. You went to him for money and did not know what he was treasurer of?

A. I knew that he was treasurer of the Richmond and Danville and did not know that he was treasurer of the Central railroad.

137 Q. You knew he was treasurer of the Richmond and Danville, but did not know whether he was treasurer of the Central or not?

A. Didn't know that.

Q. Were you in—what would you call—Day's Gap. This place—

A. Day's Gap.

Q. Were you there when this coal was shipped?

A. No, sir; I was not.

Q. Didn't you help ship it?

A. No, sir; I had it shipped.

Q. You were not there, though?

A. I had representatives there.

Q. Do you know, of your own knowledge, that this receipt here, this consignees' shipping ticket that is here, that it was shipped just as it is marked on this ticket, of your own knowledge, now?

A. I do not know what you mean by that?

Q. I mean to say did you have any personal knowledge that that particular—

A. I could not refer to shipments of any particular car there, but I went to mines frequently and saw coal going; that was taken in impression book that we tore out.

Q. This was taken in impression book?

A. Yes, sir.

Q. Did you take the impression?

A. No, sir; I had representatives to do it.

Q. How do you know this particular ticket here is the ticket he made impression of?

A. He has his signature there. That is all I know about it—the signature of the agent.

Q. Where do you mean?

(Witness points to signature.)

Q. Down here?

A. Yes, sir.

Q. That is signature of your agent?

A. That is signature of the railroad agent.

Q. Do you know him personally?

A. I do.

Q. Do you know his handwriting?

A. I do. I know that is his signature and handwriting.

138 Q. This, here? (Points to paper.)

A. Yes, sir.

Q. What is his name?

A. A. J. Moynette (?)

Q. All of this coal shipped from same place?

A. I do not know; though all——

Q. Where are the original shipping tickets?

A. They are the ones signed.

Q. You tell me these were impressions?

A. I did not say they were not original bills. We made out three bills, and we had them in book form; he would send off the duplicate.

Q. Send off the duplicate?

A. Yes, sir.

Q. Where is this dated?

A. Dated Day's Gap.

Q. What State is that?

A. Alabama.

Q. Well, then, your only knowledge, then, of the correctness of this is by his signature on it?

A. That is all. That is the only evidence we have that we delivered it.

Q. You have men there who know personally of the delivery of the coal, have you not?

A. No, sir; have no one there who would know personally. The coal is weighed at the mines by the weighmen, and the clerk never sees the car.

Q. Well, you have a man who weighs cars, have you not?

A. No, sir; I think he is dead—the man that weighed most of them.

Q. The clerk in the office that shipped them knows memorandum of cars and his shipment, does he?

A. He could tell you more about that than I know. He had no right to know more about it than I have unless his memory be very fine.

Q. He kept this book?

A. Yes, sir.

Q. You were in Birmingham?

139 A. Yes, sir. That clerk is not in our employ; I do not know where he is.

Q. How many points to which this coal was shipped did you visit—only Savannah?

A. Well, I went to all of them except Sebastopol.

Q. When did you go to these points?

A. I do not know. I went frequently; could not tell you about that.

Q. You stated that you went—in your direct examination—that you went down to Savannah?

A. Yes, sir; I went there a few days after the road went into the hands of a receiver.

Q. And you saw some coal there?

A. A great deal of it.

Q. Did you visit these other places after the appointment of receiver?

A. No, sir; I did not go there for the purpose of seeing coal, but could not help seeing it scattered all around there.

By Mr. LAMAR:

Q. About how many tons a day did you ship?

A. I do not know. I supplied their wants, which were about eight hundred tons a day. Their wants were about that. Did not ship myself.

Q. During the time when you were shipping this extraordinary large amount, you would really then be apt to ship more than that?

A. Yes, sir.

Q. How much did you ever ship—the greatest amount in one day?

A. We have shipped nearly two thousand tons a day. I did ship them two thousand tons in one day.

Q. You say it would take seven or eight days for that shipment to reach point of delivery?

A. Ordinarily. Sometimes it took them longer than that. It did very frequently take them longer.

140 By Mr. LAMAR:

These items here—these accounts here—are those the dates of shipments? That represents the date of shipment? (Hands witness paper.)

A. Yes, sir.

Mr. LAMAR, to stenographer: Dates on consolidated statement to represent the date of shipments.

Q. That I understand to be date of receipt?

A. Yes, sir; date of receipt.

Q. And car might not be shipped until next day?

A. It might have gone off that night, but ordinarily next day.

By Mr. ERWIN:

Q. In reference to your statement that you thought there was about twelve thousand tons on hand on March 4th, 1892, in the hands of the Central Railroad and Banking Company of Georgia.

WITNESS: I said there ought to have been no less than that. I have no idea of what it is. I know the balance of the railroads—it would supply the N. & O., C. N. O. & T. and the Southern Pacific—

never have less than that. Generally, they want a great deal more. I could not tell.

By Mr. LAMAR:

Q. All of these bills were originally made out to the Central railroad?

A. Yes, sir.

Q. Bills kept in the name of the Central railroad?

A. Yes, sir.

Q. How many tons in a car?

A. I think average about twenty-three to twenty-four tons a car.

By Mr. HILL:

Q. You gave this morning prices and values of this coal at different points in Georgia. State how you arrive at those prices—at those values?

A. I simply add freight to cost of coal at mines.

Q. Outside of contract price here, what was the value of this
141 coal; if under any state of facts it could be charged to the Central railroad or the Richmond and Danville railroad—at its value outside of the contract?

A. If they pay equivalent value to that obtained from other mines by the railroads, f. o. b. cars at mines, it would pay me between ninety-eight cents and one dollar.

By the COURT: What does he mean?

WITNESS: He asked me value of coal. There was combination of other mines and they agreed not to charge less than \$1.10 per ton for coal f. o. b. cars at mines. That we have made twenty cents and others an arbitrary difference between my mines and Sloss Iron and Steel mines of ten cents; it would make it ten cents a ton; our coal at \$1.00 would have been equivalent to \$1.10 at Sloss Iron and Steel Company.

By Mr. ERWIN:

Q. What was the price of coal at the mines, independent of this combination?

A. \$1.25. You mean independent. I thought you meant independent of the railroad.

Q. I mean to say what would have been the price to railroads if this combination had not been formed?

A. Well, I do not know. That is all guess-work on my part.

Q. Well, what do you think from the situation of affairs at that time—from the competition that was in existence?

A. I am not enough of a coalman to be a good guesser.

Q. Was all the balance of the testimony what you call guess-work?

A. No, sir; none of it was guess-work.

Q. Now, without this combination having existed, if there had been no combination, what would have been the price at the mines to the railroads?

A. I would like to know how I could approximate it. What

would have been the same price to me as I sold before, but that was the strongest kind of competition.

Q. And what was that?

A. Same price I got before. I got ninety-five. There was the strongest competition that has ever been in the South between
142 coal mines. Ninety-five cents is what I contracted with the Central last time.

In the Circuit Court of the United States for the Western Division
of the Southern District of Georgia.

ROWENA M. CLARKE <i>et al.</i>	} In Equity. Intervention
<i>vs.</i>	
CENTRAL RAILROAD AND BANKING COM- PANY OF GEORGIA <i>et al.</i>	
	} tion of Virginia and Alabama Coal Com- pany.

Hearing before the special master, W. D. Nottingham, Esquire,
October 27th, 1892.

Appearances.

For intervenor, Dessau & Bartlett, Esquires, by Mr. Dessau.

For defendant Central Railroad and Banking Company of Georgia, Marion Erwin, Esquire.

For defendant Richmond and Danville Railroad Company, Joseph R. Lamar, Esquire.

MR. ERWIN: I will state that there was an agreement entered into by counsel in this case, that all the coal billed on that account should be taken as received along the lines of the Central Railroad and Banking Company of Georgia, unless the books of the Central railroad showed to the contrary. I have had an investigation made at several different points on the Central Railroad lines where this coal was shipped according to the bill of particulars, annexed to the intervention, and I find that at several points, this state of facts exist. For instance, at Augusta, that some of the coal shipped to that point was transferred to the Richmond and Danville for the Charlotte, Columbia and Augusta railroad, which is not one of the
Central Railroad lines. I find also that some of it was trans-

143 ferred to the Port Royal and Augusta, and I find also that the coal dumped into the bins of the Central railroad at Augusta was used in common by the engines of the Charlotte, Columbia and Augusta road, this being a Richmond and Danville line coming into Augusta. All these facts are material to this case and bring it without the agreement we had made. I find that about the same thing is true in reference to the coal shipped to the city of Macon, as for instance, in connection with the Macon and Northern Railroad Company, and I have made inquiries at certain other points and we are getting up this information as fast as we can. The papers are in the hands of the officers in charge of reports. I have the report of the Macon office and at the others that information is being gotten up as fast as it can be.

MASTER: This information was not in possession when it was set for last time. I made the setting as peremptory as I could. I thought counsel away from the city—I had not gotten Lawton & Cunningham's telegram then—I was under the impression that they were not giving their attention to this. I made a peremptory setting of the case for today.

Mr. ERWIN: The situation is simply this; the evidence has to be taken and it is impossible for us to proceed without getting that testimony.

MASTER: There ought to be a reasonable limit to the time. We ought to set the case and let it be done.

Mr. ERWIN: The equity rules give us three months after the case goes to issue and replication is filed to take testimony. We don't want any more delay than we are obliged to get.

MASTER: I think you have had your three months.

Mr. ERWIN: I do not think they filed any replication. We are not standing on technicalities; we want to get up that testimony as soon as we can and give the court every facility to dispose of it as soon as possible.

Some of this testimony is at Augusta, some of it may be taken at Atlanta, some of it at Columbus, some at Eufaula, Ala., some at Savannah. I believe counsel can agree to a statement of facts. All we want is to get at the truth as to the disposition of the coal. I

144 believe that we can agree to a statement of facts that will correctly set those things right and we can dispose of the case without much labor; but it is impossible for us to get up that information without more time, and the agreement which is to be filed, or was filed, here specifically provides—and that was the agreement your honor made at the last hearing that I attended—that we should have time to investigate our books and see whether the agreement is right and whether the coal was used by the Central Railroad lines. We have examined the books and find it is not correct and we are willing to get up the evidence as soon as we can. Mr. Hill consents for a reassignment for two weeks and I am willing to reassign it conditionally, if we can possibly get up the evidence by that time.

This case was set for further hearing for November 24th, 1892.

VIRGINIA AND ALABAMA COAL COM- PANY <i>vs.</i> THE RICHMOND AND DANVILLE RAIL- road Company and The Central Rail- road and Banking Company of Georgia and the Receivers Thereof.	}	Intervention in the Case of Rowena M. Clarke <i>vs.</i> The Central Railroad and Banking Company of Georgia. In the Eastern Division, Southern Dis- trict of Georgia.
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The following agreement is made for the purpose of saving time and unnecessary expense; it being expressly understood and stipulated that the defendants, represented by the undersigned, reserve the right to object to the competency or advisability of the evidence and waive no objection heretofore raised, respecting the right of

the intervenor to proceed in said cause and waives no other right or equity whatever.

The original letter, of which a correct copy is hereto attached, having been lost, said copy may be used in lieu of the original (the copy being the same as that exhibited to the intervention).

2d. It is agreed that the coal described in the exhibits to the intervention by amounts and dates of shipments was delivered by the intervenor to the railroad lines of the Central Railroad and Banking Company of Georgia which were being operated by the Richmond and Danville Railroad Company until the 4th of March last, 145 at the dates and in the amounts shown by such exhibits.

(This agreement is made with the reservation of the right to show and prove any error in said exhibits, should it hereafter be discovered.)

This October 5th, 1892.

HENRY JACKSON.
LAWTON & CUNNINGHAM.

Memorandum by the Clerk.

Here follows attached to the agreement a copy of the letter of Joseph Minetree of July 13th, 1891, which is attached to the intervention and already copied in this transcript hereinbefore, page 81, as Exhibit "A," and which is here omitted to save repetition.

In the 5th United States Court, Eastern Division, Southern District of Georgia.

MRS. ROWENA M. CLARK <i>et al.</i>	} In Equity. Bill, etc. Intervention of the Virginia and Alabama Coal Company.
<i>vs.</i>	
CENTRAL RAILROAD & BANKING COMPANY OF GEORGIA <i>et al.</i>	

Evidence Before Special Master W. D. Nottingham, Esquire, at Macon, Ga., March 10th, 1893.

Appearance for intervenor, W. B. Hill, Esq., of Hill, Harris & Birch, and Olin Wimberly, Esq., of Steed and Wimberly.

For the receiver of the Central Railroad and Banking Company, Marion Erwin, Esq.

146 For the Richmond and Danville Railroad Company, J. R. Lamar, Esq.

MASTER: We will take up and finish the case of the Virginia and Alabama Coal Company.

Mr. HILL: Yes, we want to take up and finish that case today and go forward in the Sloss case. We have some witnesses here in that case.

Mr. Erwin moved to postpone the closing and argument of this case for the following reasons: First, no report had been filed by an expert representing the Central Railroad and Banking Company according to the order of the court. Second, on account of illness,

counsel had been unable to give this matter attention. Third, the reports of the experts, as they stand, are unintelligible and some time is necessary to systematize and get them in proper shape. Fourth, because the court had ordered that the hearing shall be ten days after the filing of the reports of the experts, and that as the experts representing the Central Railroad and Banking Company had not filed his report, that no hearing could be had without further order of the court.

Mr. Hill stated that, in view of the illness of Mr. Erwin, he would consent to any postponement that would be to his advantage. But, in regard to the other grounds for continuance, said that no expert had been appointed by the Central Railroad and Banking Company to go around with the other experts, but that it had contented itself with the appointment of a gentleman at each one of the points visited to go over the work of the two experts at that point, and that no report had been contemplated by the Central Railroad and Banking Company and that instead of being "unintelligible," he considered the reports in admirable shape.

Mr. Hill offered in evidence the reports of Mr. C. H. Schooler and W. B. Starke, of file of this case, in regard to the amount of coal received prior to March the 4th, and after March 4th, on the lines of the Central Railroad system, and the amount of coal in the bins of said system on the 4th of March, 1892.

These reports were objected to by Mr. Erwin because they were not sworn to, according to the order of the court; and upon agreement of counsel, the affidavits of C. H. Schooler and W. B. Starke to reports were waived and oral examination of C. H. Schooler had, in lieu of same, but such testimony to be considered as affidavits made as of today, Mr. Erwin insisting that reports would have to be considered as filed as of today.

C. H. SCHOOLER, called for the intervenor, after being duly sworn, testified:

Examined by W. B. HILL, Esquire:

Q. I will first offer a report which has on the back of it these words: "Coal unloaded after March 4, 1892." I will ask you to examine that and to state whether or not it is a true and correct report from the books of the Central Railroad and Banking Company, showing the cars of coal of the Virginia and Alabama Coal Company that was received by the road, or by the receivers of the road, after March 4, 1892.

A. Yes, sir; that is correct.

Q. You say that is correct?

A. Yes, sir; two statements: One is record of cars unloaded between dates, that is, no record could be gotten of the exact date they were unloaded, and the statement shows here a car that was unloaded between February 3d and March 8th.

A. The way we got at that was to get the day a certain car came in loaded and the day it went out empty, the agents not having kept a record of the exact unloading day.

Then there is a statement of cars unloaded after March 4th, sunrise, showing 13,210,500 pounds.

Q. I hand you another report, signed by yourself and Mr. Starke, which is backed with these words: "Coal delivered prior to March 4, 1892." Please state whether that is correct and a true report made from the books of the Central Railroad and Banking Company.

A. This is correct. This report shows the amount of coal delivered to the different divisions prior to and including March 4th, and shows 45,307,700 pounds. 844,100 pounds of that could not be located.

Mr. LAMAR: What do you mean by that?

A. That they could not be finally traced.

Mr. LAMAR: That there was no evidence that they were received by the Central?

A. The fact that they were vouchered, that was in itself an acknowledgment of the receipt. We could not get the exact
148 unloading date or where they were unloaded. It was more than likely that those cars, we judge, were carried on work-trains and no record of them was kept at all.

Q. I hand you a statement of coal in the bins of the Central railroad, March 4, 1892. Is that a correct statement of the amount of coal on hand on the bins at the different places on that day?

A. This statement is also correct, showing the number of tons on the bins of the Central railroad, March 4, 1892, 18,426 tons. This statement is itemized, showing the number of tons on each bin. Now there is a great deal of coal unloaded at points where there are no bins at all, and went direct from the cars to the engines.

Cross-examination.

By Mr. ERWIN:

Q. When you say that you took this statement from the books of the Central Railroad and Banking Company of Georgia, in whose hands were the books to which you referred?

A. In the places where they have bins, they were in the hands of the coal-chute boss who kept the coal records, where there was no bin in the local agent's office.

Q. You mean the local agent of the receiver of the Central railroad?

A. Yes, sir.

Q. The books to which you referred were the books that you found in the hands of Mr. H. M. Comer, receiver, and his sub-agents?

A. Yes, sir.

Q. Take the first statement entitled "Coal delivered prior to March 4, 1892." The books which you found which covered that period were books of what company? How were they entitled?

A. I do not know that I can tell you. They were in the hands of agents of the receiver.

Q. Were they not books kept by the Danville for the operation of the Central prior to March 4th?

A. I suppose so.

Q. The Richmond and Danville Railroad Company?

A. I suppose so.

149 Q. The books then that you examined in the hands of the receiver were books which the receiver had showing coal receipts and coal disposed of by the Richmond and Danville Company prior to March 4th, and also the books which showed the coal received and coal disposed of by the receiver after March 4th?

A. Yes, sir; that is the way it stood.

Q. These statements that you have here—are these statements of the entire number of cars? Do they cover the entire number of cars shipped by the Virginia and Alabama Coal Company?

A. Yes, sir. It covers the entire number that constitutes the amount that is involved.

Q. You confined your investigation entirely in these reports to cars which were sued for in this account?

A. Yes, sir.

Q. Do you account in this report for all the cars your company has brought suit on?

A. All except a very few of them.

Q. Take this report, "coal delivered prior to March 4th 1892," see if you can tell me from your report there what became of Georgia Pacific car, No. 18109?

A. When shipped? Can you give me the date of shipment?

Q. Some time in November '91, I think.

A. I do not find that car on here, sir.

Q. Look on both reports, the one after March 4th.

In reply to a question by the master as to the object of this testimony, Mr. Erwin said he wanted to find out whether the report went into details, whether the report would show that this car was transferred to the Charlotte, Columbia and Augusta road, etc.

A. If that car was transferred to a different road at the time the Virginia and Alabama Coal Company was notified and the bill was made against the other roads. (Referring to report of coal delivered after 4th of March.) It does not appear on this report either.

Q. Did you examine the coal-chute record at Augusta?

A. I got the record at Augusta from the storekeeper—the supply agent there.

Q. Did you make any examination at Augusta to see whether or not the coal which was shipped to Augusta, during the time the Danville was operating the Central, was not placed in bins
150 from which trains were coaled there were operated by the Danville on the Charlotte, Columbia and Augusta railroad?

A. I do not exactly understand that.

Q. Does your report there show the number of cars which were unloaded at Augusta?

A. It gives the number of dates of the cars unloaded at Augusta.

Q. Does it go into any further investigation to show what became of the coal after it was unloaded at Augusta, what road it was used on?

A. No, sir; not after it was put in the Augusta bins.

Q. Did you make any inquiry to ascertain whether or not those bins were not in common use, when the Danville operated the road, both by the trains which ran on the Central lines and those which ran on the Danville lines—that is, lines operated by the Danville not in the Central system?

A. I never made any inquiries, but it is not customary for two different railroad companies to use coal out of the same bin.

Q. You didn't even make inquiries?

A. No, sir.

Q. Did you make any inquiry to see whether or not the Port Royal and Augusta also coaled at the same bin?

A. No, sir; I never made any inquiry at all.

Q. Look on those reports and see if you make any report in reference to the disposition of—in March, 1892, I have got here shipped March 2d, 1892—Georgia Pacific car No. 20712. (Referring to same report made by an agent at Augusta, but which was not put in evidence.)

A. I have no record of that car.

Q. That car was one of the cars that you investigated—what became of it?

A. I do not know whether it was or not.

Q. If that car is in the declaration sued on here, how do you account for your not having a report of it there?

A. If that car was included in the list that was furnished us when we started out to make this investigation, why it certainly ought to appear on this statement. This statement is supposed to cover, and does cover, every car that was given us for investigation.

Q. Look for—March 2d, Georgia Pacific car No. 20894.

151 A. That was unloaded March 5th, at Macon.

Q. Where did you get that record from?

A. Either at the coal-chute boss' record at Macon or at the freight agent's office.

Q. Freight agent's office where?

A. In Macon.

Q. Look for—same date, Georgia Pacific car 20927.

A. I have got it here shipped January 25th.

Q. What disposition did you make of it?

A. That was unloaded at Sebastopol, May 30th.

Q. Perhaps that car could have been refilled and sent back again?

A. Yes, sir; in the time it could.

Q. Look for March 2d, and see if you have it there?

A. I don't find it on that day.

Q. Do you find it elsewhere?

A. Not on this sheet. It may be on the other report "cars unloaded prior to."

Q. Hardly if it was shipped March 2nd?

Q. Look for Georgia Pacific car 20865—March 1st, shipped.

A. I have 20565.

Q. What is the weight?

A. 40,400 pounds.

Q. What became of that car?

A. Unloaded here March 11th.

Q. At Macon?

A. At Macon.

— March 5th, 1892, look for Georgia Pacific car 20625.

A. I have it on March 4th, unloaded at Union Springs, Alabama, March 11th.

Q. Your bill says that was shipped to D. D. Curran, Macon, Georgia?

A. Yes, sir.

Q. How do you account for its being at Union Springs?

A. The majority of the coal shipped during that period was shipped to D. D. Curran at Macon and Columbus, and at Columbus principally, the coal was forwarded to these different points. All the coal shipped to Columbus was not used at Columbus. All the coal billed to Macon was not used at Macon. It was shipped
152 from here to different points and from Columbus to different points. It seems that the superintendent at Columbus had the disposition of the coal in his hands.

Q. Then the place of shipment does not necessarily indicate that the coal was used at that point?

A. No, sir.

Q. Did you make any inquiry at Macon to ascertain whether or not the coal which was binned at Macon was not in common use by the Macon and Northern railroad, which was a line operated by the Danville and ran into Macon?

A. No, sir; I made no inquiries of that kind.

Q. Did you make inquiry at other points to see whether or not it was not the common practice of the Danville to coal their engines from common bins?

A. No, sir.

Q. You made no inquiries of that sort?

A. No, sir.

Q. Didn't you know that the Macon and Northern railroad, a line running into Macon, was being operated by the Richmond and Danville previous to March 4th, 1892?

A. No, sir; I was not aware of that fact.

Q. Look on your report for January 15th, 1892, R. & D. car 15384?

A. 15384 was unloaded at Macon on January 22d.

Q. Where did you get that information from?

A. Either from the records kept by the coal-chute boss or from the freight office?

Q. Who was in charge of the freight office?

A. I have really forgotten his name.

Q. Mr. McGee?

A. No, sir.

Q. Mr. W. W. Lane?

A. No, sir. The gentleman that looked at the record with me was the chief clerk of the car-record department in the freight office. I may have gotten this from the coal chute. I say it is from either one of the two.

Q. Look for Richmond and Danville, 15268?

A. Unloaded January 19th at Macon.

Q. 14340?

153 A. Unloaded January 19th at Macon.

Q. What points did you visit to make this report?

A. I went to Savannah, Columbus, Macon, Atlanta, Cedartown, Chattanooga, Griffin, Wadley, Americus and Augusta.

Q. Did you visit the place where the Georgia Pacific crosses the C. R. & C.—I do not remember the name?

A. The old name of the place was Kramer.

Q. Did you visit Kramer?

A. No, sir.

Q. I notice there are quite a number of cars shipped to Kramer?

A. Yes, sir. It was distributed there something like it was from Columbus, only none of it was used there at all. I took the number of the cars shipped to Kramer and gave them to Mr. McNeely, superintendent of the division on which Kramer is and asked him to get the agent there to give him his record of forwarding, so I could ascertain where the cars went to, knowing there was no coal bin or coal at that point. It showed that the coal went to Griffin, Cedartown and other points.

Q. It showed that coal was also distributed over the Georgia Pacific?

A. No, sir.

Q. None of the coal went to the Georgia Pacific?

A. None of the cars I asked him for his forwarding on.

Q. Did you ask him about all the cars that were on that list as having been shipped to Kramer?

A. As having been shipped to Kramer; yes, sir.

Q. Look at this list here, embracing the following cars: Georgia Pacific, 18109, 21204, 21010, 20809, 20909, 21178, 20425; Richmond and Danville, 14351; Savannah and Western, 5248; and state whether any of those cars are accounted for on your list.

(Question not insisted on.)

Q. Did you ascertain whether or not there was coal bought from other companies than your company by the Richmond and Danville Railroad Company, during the time it was operating the Central railroad?

A. Yes, sir; in going over the records, I found where they got coal from other companies.

Q. Of this coal in the bins then, on the 4th of March, there
154 was no definite way of ascertaining from whom that coal had been bought?

A. No, sir.

Mr. Hill stated that he had a written agreement of the sellers of this coal agreeing to prorate their claims for coal on the bins in proportion to the amount of their respective debts.

Mr. Erwin stated that he would object to any such agreement or to any proof of that character for several reasons: First, that the Central railroad had a supply of coal when the Danville commenced to operate it and *non constat*, but what some of that coal was in the bins.

Second, *non constat* that the coal of any one company remained over. Perhaps, the particular coal that any one company shipped might have all been used up.

Third, after a mixture of that sort the identity of the goods is lost and the parties have to claim as simple contract creditors and not by any right of lien, where the proof is intangible as to the amount.

MASTER: When that is brought up, we will pass on it.

Examined by Mr. LAMAR:

Q. You have made up a report as to the amount of coal that you found in the bins and the amount that was unloaded before and after March 4th. I understand you to say that you got this information from books in the possession of the receiver?

A. Yes, sir.

Q. Now, was this statement that you have prepared, examined by the agents of the receiver?

A. It was. The statement itself was not examined. It was not made up until after we returned, but in making the investigation the agent was with us in looking over and getting the information.

Q. He was agent of the receiver?

A. Yes, sir; I do not know that he was agent. It was one of his office men.

Q. The books showing the amount of coal on hand the 4th day of March and the amount received after the 4th day of March, were books of the receiver; were they?

A. They were in the hands of the receiver's agents then. Those books they do not show the actual number of tons of coal on
155 hand March 4th, or the number of tons of Virginia and Alabama coal unloaded prior to or subsequent to March 4th, but it gives the unloading date of each separate car as we have it, and we got that information in that shape and then after returning to the office we summarized it. He has no complete record as to how much Virginia and Alabama coal was delivered prior to and subsequent to March 4th.

Q. The data from which you made the report was furnished by the agents of the receiver?

A. Yes, sir.

Q. Or from books in the possession of the receiver?

A. Yes, sir.

Q. It shows that thirteen million pounds of coal was unloaded after the 4th day of March?

A. 13,210,500 pounds of the Virginia and Alabama coal delivered after March 4th.

Q. You found in the bins on the 4th day of March about 18,000 tons?

A. Yes, sir.

Q. 25 tons you could not locate where it was unloaded—250 tons?

A. Yes, sir.

Redirect examination.

Mr. HILL:

Q. Do you wish to make any explanation about a difference between you and Mr. Starke in regard to a few small matters? If you have any wish to make an explanation as to how there came to be a difference about those points, you can do so.

A. I will state that when Mr. Starke and I separated, he went to Washington and I back home. He took a copy of the information we had gotten together. I turned over this information to the Virginia and Alabama Coal Company in Birmingham to make up a full and complete statement as it is here. They copied it, of course, in typewriter. I cannot say whether they double-checked themselves or not. If there is any difference, it is in the error of the stenographer, or rather typewriter, but as he says in this letter here "the majority of them are immaterial," I do not think there is two cars affected at all.

Q. How long were you and Mr. Starke engaged in this examination?

A. I was about seven weeks.

156 Q. How long was he?

A. About three weeks.

Q. State with what degree of thoroughness and care you and he worked in this matter.

A. We were very thorough and very careful. We went over the records together.

Q. When you went to the office of the receivers at the different places for this information, did you state the purpose and object for which this information was being gotten?

A. Yes, sir.

Q. Was there at any place any difference between you and the agents of the receiver in regard to this data that was furnished?

A. No, sir.

Q. No dispute as to the correctness of the basis on which you made your report?

A. No, sir.

Q. At about what expense to the Virginia and Alabama Coal

Company and the Sloss Iron and Steel Company, was this work done?

A. \$475.

Q. Does that include your time?

A. Yes, sir.

Q. I will ask you, as an expert, to state whether or not the method that was mentioned a moment ago as to prorating among the different coal companies a *pro rata* part of the total amount of coal on the bins, would be a fair and just method of arriving at the rights of each.

Objected to by Mr. Erwin on the ground that it was a legal conclusion, and there was no evidence so far that would authorize the admissibility of the evidence on any other ground.

A. I should judge that it was a perfectly fair and just way.

Q. Mr. Erwin asked you about the delivery of some coal at Union Springs. Do you know whether that is on the Central railroad in Alabama?

A. Yes, sir.

Q. I wish to call your attention to credits on the account of the Virginia and Alabama Coal Company suit, which credits amount to \$5,347.79, and ask you whether or not, in tracing the cars, you traced the cars that had been paid for and that were represented by a credit.

157 A. No, sir; I did not.

Q. Did you find out first what cars had been paid for and were accounted for in the credit.

A. Yes, sir.

Q. Those you did not trace?

A. No, sir.

Q. Is that a probable explanation of the fact that Mr. Erwin called your attention to, that certain cars do not appear on your report?

A. Yes, sir.

Cross-examination.

By Mr. ERWIN:

Q. Are you book-keeper for the coal company?

A. No, sir; I am connected with the Sloss Iron and Steel Company.

(Witness stated, in his evidence on the hearing of the intervention of Sloss Iron and Steel Company, that he was not an employee of the Virginia and Alabama Coal Company.)

Q. What position do you hold?

A. Assistant auditor.

Q. This account is made out in invoices?

A. Yes, sir.

Q. All this coal that is charged for in this account they have

here, is not represented by cars for which you had the list of to make an examination?

A. When Mr. Ryan furnished me a statement of his account, it was furnished, fixed up exactly like that one is, showing an invoice of such and such a date, so many cars so much. At the bottom this statement showed credits as it is shown there. Well, when I first received the statement, I knew that it would be unnecessary to trace a car that had been paid for, if I could find out what cars that credit constituted, and that is the first thing I done. I found out the cars that those credits paid for and eliminated them from my statement of the cars to be checked up.

158 Q. And the statement of the cars you checked up, then, does not cover all the cars that were embraced in cars containing coal charged for in the account.

A. It contains only those cars which those credits did not affect.

Q. Did Mr. Starke, the Danville man, have access to the list you examined, showing what cars had been paid for and what not?

A. Yes, sir; he examined the records with me and got the information.

Q. What records?

A. Records of the Central's office at Savannah.

Q. Central office at Savannah?

A. Yes, sir.

Q. Was that where you got the information as to what cars had been paid for and what not?

A. There is where I got the information as to what cars that credit paid for.

Q. And your report does not cover those cars?

A. It does not cover those cars.

Q. Your report does not show what became of those cars that were paid for?

A. No, sir.

Q. But it does show that those payments were made from the persons in charge of the Central railroad at Savannah?

A. Those credits were gotten out of the records in the Central railroad office.

Q. The credits are shown in this?

A. Yes, sir.

Virginia and Alabama Coal Company and the Sloss Iron and Coal Company.

C. H. SCHOOLER, recalled by plaintiff, testified:

In my investigation I made in behalf of the intervenors, Sloss Iron and Coal Company and Virginia and Alabama Coal Company, I looked generally through the records of the Central Railroad and Banking Company of Georgia. Besides our companies that they dealt with, I found two (2) others on their books; one was the Little Warrior and the other was the Corona Coal and Coke Company. These latter were the two besides ours that the company

159 dealt with. The chief office of the Corona, I think, is in Jasper, Alabama. I don't know where the chief office of the Little Warrior Coal Company is; I think though it is an Alabama company.

Cross-examined by Mr. ERWIN :

Since you mention it, I think I saw the name of the Tennessee Coal and Coke Company also on the books of the Central; there may have been other Tennessee mining companies selling coal to the Central, but I only recollect the one just mentioned, the Tennessee Coal and Coke Company.

The books that I examined were at the time in the hands of Mr. Comer, the receiver, and were the same books that were kept by the Richmond and Danville during the time of its operation of the lines of the Central Railroad and Banking Company of Georgia.

Report No. 1 of C. H. Schooler and W. B. Starke, Experts Central Railroad of Georgia, in Account with the Virginia and Alabama Coal Company.

For coal delivered to Superintendents Dill, Curran, and Epperson prior to and including March 4th, 1892, as per attached memorandum.

Savannah	10,670,200
Sebastopol	5,945,500
S. & A. R'y	91,200
Columbus	3,662,500
Union Springs	81,600
Macon	11,598,800
Crystal Ice Co.	40,700
Atlanta	1,185,500
Cedartown	303,900
Chattanooga	448,600
Griffin	282,800
Cameron	50,000
Work-train	201,300
Smithville.....	773,400
Gordon	40,500
Between Birmingham and Columbus	41,000
Stillwell.....	143,400
Wadley	151,300
Albany	770,700
160 Americus.....	131,500
Fort Gaines....	50,900
H. Valley	150,600
Service train.....	131,500
Troy	322,600
Eufaula	750,100
Brantley	90,000
Ga. Midland R'y	120,000

Col. So. R'y.....	202,500
Muscogee Mills.....	50,000
Spartanburg.....	480,300
McCormick.....	523,200
Port Royal ...	294,600
Mile-post 95.....	50,800
Augusta.....	4,632,100
Coal for which we have railroad company's receipt, but which was not located by experts....	844,100
	<hr/> 45,307,700 lbs.

This is to certify that the above checkings are correct as taken from the records of the Central Railroad and Banking Company of Georgia. The checkings were made personally by the undersigned.

C. H. SCHOOLER,

Representing Virginia and Alabama Coal Company.

W. B. STARKE,

Chief Clerk Statistical Dep't, Richmond and Danville R. R. Co.

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Statement of Shipments.

162 Central Railroad and Banking Company of Georgia in account with the Virginia and Alabama Coal Company.

For coal shipped to B. C. Epperson, sup't.

Statement Showing Date of Shipment of Cars Furnished Central Railroad of Georgia Prior to and Including March 4th, 1892, and When and Where Unloaded.

Date of shipment.	Initial.	Number.	Weight.	Date unloaded.	Place unloaded.
1891.					
Oct. 21.	G. P.	18,586	52,000	Dec. 2, '91	Augusta.
	23. G. P.	18,576	50,800	Oct. 24, '91	95-mile post.
	23. G. P.	18,105	50,600	Nov. 5, '91	Sebastopol.
	30. C. of G.	12,073	40,700	Nov. 5, '91	Enfauila.
Nov. 7.	R. and D.	15,309	40,800	Nov. 12, '91	Service train.
	10. G. P.	21,108	50,900	Nov. 19, '91	Augusta.
Dec. 21.	S. and W.	16,058	51,000	Dec. 26, '91	"
	21. W. N. C.	148	40,000	Dec. 26, '91	"
	21. C. of G.	13,268	50,200	Dec. 29, '91	"
	22. G. P.	21,222	50,700	Dec. 30, '91	"
	22. S. and W.	5,222	52,600	Jan. 6, '92	Columbus.
	23. G. P.	21,603	60,000	Jan. 8, '92	Port Royal.
	23. G. P.	21,402	60,000	Dec. 31, '92	Augusta.
	23. G. P.	18,183	60,000	Jan. 1, '92	"
	23. G. P.	21,268	50,000	Jan. 2, '92	"
	23. C. of G.	13,204	60,000	Dec. 30, '92	"
163	28. V. and A.	715	51,000	Jan. 11, '92	McCormick.
	28. S. and W.	5,235	50,200	Jan. 11, '92	Spartanburg.
	28. G. P.	20,549	40,000	Jan. 11, '92	Augusta.
	30. S. and W.	5,102	52,000	Feb. 17, '92	"
	30. R. of G.	431	50,000	Jan. 6, '92	"
	30. V. and A.	773	50,600	Jan. 5, '92	"
	31. S. and W.	20,504	50,000	Jan. 6, '92	"
	31. C. of G.	13,259	51,900	Jan. 5, '92	"
	31. C. of G.	13,004	50,900	Jan. 6, '92	"

Date of shipment.	Initial.	Number.	Weight.	Date unloaded.	Place unloaded.
1892.					
Jan.	2. C. of G.	12,013	41,500	Feb. 3-March 1, '92	Stillwell.
	2. G. P.	20,469	40,700	Jan. 8, '92	Augusta.
	2. C. of G.	13,270	50,500	Jan. 8, '92	"
	4. C. of G.	12,003	41,000	Jan. 8, '92	"
	4. C. of G.	13,098	50,700	Jan. 9, '92	"
	4. C. of G.	13,211	50,000	Jan. 8, '92	"
	4. C. of G.	13,057	50,000	Feb. 16, '92	McCormick.
	4. G. P.	18,677	50,000	Jan. 8, '92	Augusta.
	4. R. and D.	15,321	40,400	Jan. 4, '92	Macon.
	4. R. and D.	15,284	40,700	Jan. 11, '92	Spartanburg.
	5. G. P.	21,444	50,600	Feb. 8, '92	Augusta.
	5. G. P.	18,007	50,800	Feb. 10, '92	"
	5. G. P.	18,582	50,000	Jan. 14, '92	"
	5. G. P.	20,933	50,700	Jan. 19, '92	McCormick.
	5. S. and W.	20,540	50,100	Jan. 12, '92	Augusta.
	5. S. and W.	5,278	50,500	Jan. 16, '92	Port Royal.
161	5. S. and W.	20,509	50,700	Jan. 22	Augusta.
	5. S. and W.	20,515	48,200	Jan. 14	Spartanburg.
	6. G. P.	21,113	50,400	Feb. 20	McCormick.
	6. G. P.	20,291	40,900	Jan. 15-28	Port Royal.
	6. G. P.	20,815	50,500	Jan. 11	Augusta.
	6. G. P.	21,090	50,500	Jan. 29	"
	6. G. P.	20,973	50,800	Jan. 13	McCormick.
	6. G. P.	21,182	50,000	Jan. 12	Augusta.
	6. G. P.	21,158	50,800	Feb. 6	"
	6. G. P.	21,048	50,700	Jan. 12	"
	6. C. of G.	13,000	50,800	Feb. 12	"
	6. C. of G.	13,273	51,300	Jan. 18	Port Royal.
	6. G. P.	20,989	50,900	Jan. 28, Feb. 4	Stillwell.
	6. G. P.	21,104	50,600	Jan. 22	Augusta.
	6. G. P.	18,682	51,000	Jan. 14	"
	6. G. P.	18,423	50,600	Jan. 14	"
	6. G. P.	18,493	50,000	Jan. 14	"
	8. C. of G.	13,079	50,100	Feb. 11	"
	8. C. of G.	13,191	50,500	Feb. 11	"
	8. C. of G.	12,072	40,400	Jan. 15	"
	8. G. P.	21,016	50,800	Jan. 18	"
	8. C. and W.	5,012	50,700	Jan. 18	"
	8. S. and W.	16,033	50,000	Jan. 15	"
165	9. R. and D.	14,552	40,800	Jan. 13	"
	9. B. and O.	54,409	50,600	Feb. 17	McCormick.
	9. S. and W.	5,182	50,400	Jan. 14-17	Work-train.
	9. W. R.	23,089	50,300	Jan. 15	Augusta.
	9. S. and W.	20,532	50,100	Feb. 13-16	Work-train.
	9. W. N. C.	130	40,800	Jan. 20	Augusta.
	9. A. M. R'y ...	2,004	40,800	Feb. 10	"
	9. V. and A.	755	50,000	Feb. 10	"
	15. E. and N. of.	3,088	40,000	Jan. 29	"
	15. S. and W.	20,506	50,000	Jan. 20	"
	15. G. P.	20,744	52,000	Jan. 20	"
	16. G. P.	20,800	50,800	Jan. 27	"
	16. G. P.	20,853	51,000	Feb. 5-17	Stillwell.
	16. C. of G.	13,169	50,000	Jan. 22	Augusta.
	16. G. P.	22,480	50,700	Feb. 11	Spartanburg.
	19. G. P.	21,041	51,100	Feb. 2	Augusta.
	19. G. P.	21,134	50,100	Feb. 19	Spartanburg.
	19. G. P.	21,126	50,800	Feb. 3	Augusta.
	19. G. P.	18,345	50,000	Feb. 13	"
	19. S. I. C. L.	70,063	50,000	Jan. 28	McCormick.
	19. W. N. C.	146	40,900	Feb. 3	"
	19. V. and A.	710	51,000	Jan. 19	Augusta.
	20. G. P.	21,520	51,400	Jan. 28	"
	20. G. P.	21,404	50,900	Jan. 28	"

	Date of shipment.	Initial.	Number.	Weight.	Date unloaded.	Place unloaded.
	1892.					
166	Jan.	20. G. P.	20,723	51,000	Feb. 5	Augusta.
		21. R. and D. . .	15,262	40,700	Feb. 15	"
		21. S. and W. . .	16,016	50,000	Feb. 5	"
		21. S. and W. . .	16,099	50,700	13	"
		21. V. and A. . . .	796	50,000	19	"
		21. G. P.	1,405	50,700	13	"
		21. R. of G.	333	48,800	15	"
		22. C. of G. . . .	13,067	50,400	23	Spartanburg.
		22. C. of G. . . .	13,242	50,000	5	Augusta.
		22. G. P.	20,777	50,100	16	"
		22. C. and W. . . .	5,016	50,800	22	"
		22. G. P.	20,364	40,800	19	"
		22. G. P.	21,619	40,000	16	"
		23. G. P.	20,394	40,300	18	"
		23. C. of G. . . .	13,249	50,800	18	"
		23. S. and W. . . .	20,524	48,000	18	"
167	Feb.	16. R. and D. . .	15,312	40,300	27	McCormick.
		16. G. P.	20,603	40,800	16	Spartanburg.
		16. G. P.	21,572	50,800	20	Augusta.
		16. V. and A. . . .	737	51,000	23	"
		16. G. P.	20,334	43,400	22	"
		16. G. P.	21,027	47,700	22	"
		16. G. P.	20,926	47,300	Mar. 1	Spartanburg.
		16. G. P.	20,725	49,500	Feb. 23	Augusta.
		16. G. P.	20,534	40,000	23	"
		16. G. P.	21,285	48,000	Feb. 29	McCormick.
		16. G. P.	20,858	45,000	Mar. 22	Augusta.
		17. R. and D. . .	14,566	40,300	Mar. 2	Spartanburg.
		17. R. and D. . .	14,073	41,000	Feb. 25	Augusta.
		17. G. P.	20,403	40,500	26	McCormick.
		18. G. P.	21,415	50,000	26	Augusta.
		19. G. P.	21,133	50,300	24	"
		19. S. and W. . .	5,009	50,700	24-25	"
		19. R. and D. . .	15,271	40,900	Mar. 3	Port Royal.
		20. S. and W. . .	5,297	50,800	Feb. 26	Augusta.
		20. C. of G. . . .	13,094	51,000	Mar. 3	Port Royal.
		20. V. and A. . .	753	50,000	Feb. 26	Augusta.
		20. W. of A. . . .	1,901	50,000	27	"
		22. G. P.	21,126	51,700	27	"
		23. G. P.	21,430	50,600	29	"
		23. G. P.	21,559	50,800	29	"
		23. G. P.	20,581	41,000	Mar. 2	"
		23. G. P.	21,441	50,800	2	"
		23. C. of G. . . .	12,008	41,600	4	Spartanburg.
		25. G. P.	18,146	50,300	3	Augusta.

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Weight.

Augusta.	4,632,100
Mile-post 95.	50,800
Sebastopol.	50,600
Enfauila.	40,700
Service train.	40,800
Columbus.	52,600
Port Royal.	294,600
McCormick.	523,200
Spartanburg.	480,300
Stillwell.	143,400
Macon.	40,400
Work-train.	100,500

169 Central Railroad and Banking Company of Georgia in account with the Virginia and Alabama Coal Company.

For coal shipped to H. R. Dill, sup't.

Statement Showing Date of Shipment of Cows Furnished Central Railroad of Georgia Prior to and Including March 4th, 1892, and When and Where Unloaded.

Date of shipment.	Initial.	Number.	Weight.	Date unloaded.	Place unloaded.
1892.					
Sept.	16. C. of G.	13,256	55,600	Sept. 29-Oct. 6	Savannah.
	16. C. of G.	13,263	57,700	Sept. 20-Oct. 6	"
	16. C. of G.	13,020	56,000	Sept. 20-28	"
	16. C. of G.	13,242	56,500	Sept. 20-28	"
	16. C. of G.	13,123	55,800	Sept. 21, '91	Sebastopol.
	16. C. of G.	13,110	57,000	Sept. 22, '91	"
	16. C. of G.	13,025	55,600	Sept. 26-Oct. 1-15	"
	17. G. P.	20,334	40,000	Oct. 13, '91	"
	19. G. P.	18,747	50,200	Sept. 29-Oct. 10	Savannah.
	19. G. P.	18,390	50,500	Sept. 29-Oct. 10	"
	19. G. P.	18,539	50,000	Sept. 29-Oct. 9	"
	19. G. P.	20,405	41,800	Sept. 26	Sebastopol.
	19. G. P.	20,754	51,000	Sept. 22	Columbus.
	21. G. P.	20,796	50,600	Sept. 29-Oct. 10	Savannah.
	21. G. P.	20,710	51,600	Sept. 25	Sebastopol.
170	22. G. P.	21,265	51,000	Oct. 2-9	Savannah.
	22. G. P.	21,534	50,800	Oct. 1	Sebastopol.
	23. G. P.	21,083	50,300	Oct. 2-9	Savannah.
	23. G. P.	20,527	40,000	Oct. 29-6	"
	23. G. P.	21,192	50,400	Oct. 2-9	"
	23. G. P.	21,126	51,000	Oct. 8	Columbus.
	23. G. P.	21,164	50,300	Oct. 20	Sebastopol.
	23. G. P.	20,563	40,000	Oct. 6	"
	23. R. and D.	14,350	42,000	Sept. 28	"
	24. G. P.	20,779	40,800	Oct. 2-9	Savannah.
	24. G. P.	20,971	50,400	Oct. 21-9	"
	24. G. P.	21,232	50,800	Oct. 1 2-9	"
	24. G. P.	21,247	51,000	Oct. 2-20	"
	24. R. and D.	15,378	45,500	Sept. 30	Sebastopol.
	24. R. and D.	15,236	40,200	Sept. 30	"
171	25. G. P.	18,107	51,000	Oct. 20-9	Savannah.
	25. G. P.	18,237	50,400	Oct. 13-17	"
	25. G. P.	18,607	50,000	Oct. 6-5	"
	25. R. and D.	15,260	42,000	Oct. 6-9	"
	25. G. P.	18,650	50,500	Sept. 30	Sebastopol.
	25. G. P.	18,245	50,700	Oct. 1	"
	25. G. P.	18,285	50,700	Oct. 13	"
	25. G. P.	18,704	50,600	Oct. 8	"
	26. G. P.	21,080	51,000	Oct. 3-9	Savannah.
	26. G. P.	21,010	51,700	Oct. 5-9	Savannah.
	26. G. P.	21,190	50,800	Oct. 3-17	"
	26. R. & D.	15,374	41,300	Oct. 9	"
	26. S. and W.	5,136	50,600	Oct. 23	Sebastopol.
	26. S. and W.	5,271	50,000	Oct. 2	"
	26. S. and W.	5,121	51,600	Oct. 2	"
	28. G. P.	18,338	50,000	Oct. 2-10	Savannah.
	28. G. P.	18,209	52,000	Oct. 2-10	"
	28. G. P.	18,414	51,000	Oct. 2-10	"
	28. G. P.	18,420	50,000	Oct. 8	Sebastopol.
	28. G. P.	18,651	50,000	Oct. 8	"
	28. G. P.	18,701	50,400	Oct. 8	"
	28. G. P.	18,197	50,500	Oct. 13	"
	29. W. N. C.	118	41,000	Oct. 13	"

Date of shipment.	Initial.	Number.	Weight.	Date unloaded.	Place unloaded.
1892.					
Sept.	29. G. P.	18,294	50,700	Oct. 2-10	Savannah.
	29. G. P.	21,515	50,000	Oct. 12-17	"
	29. G. P.	20,844	50,900	Oct. 12-17	"
	29. G. P.	20,533	40,000	Oct. 12-17	"
	29. G. P.	21,507	50,900	Oct. 13	Sebastopol.
	29. G. P.	21,504	51,200	Oct. 20	"
	29. W. N. C.	165	40,000	Oct. 13	"
	30. S. & W.	16,005	50,500	Oct. 6-10	Savannah.
	30. S. & W.	16,040	50,000	Nov. 22-28	Cameron.
	30. S. & W.	5,087	50,800	Oct. 8	Columbus.
	30. C. of G.	13,197	50,600	Dec. 23	Savannah.
	30. R. & D.	14,595	40,700	Oct. 19	Sebastopol.
172	30. C. of G.	13,182	53,000	Oct. 13	"
	30. S. I. C. L.	5,154	50,000	Oct. 13	"
Oct.	5. G. P.	20,847	51,000	Oct. 20-23	Savannah.
	5. G. P.	20,647	40,000	Oct. 20-23	"
	5. G. P.	19,105	40,400	Oct. 13-19	"
	5. G. P.	21,445	51,300	Oct. 12-17	"
	5. C. of G.	13,005	50,800	Nov. 3-Dec. 1	Work-train.
	5. C. of G.	13,173	50,700	Oct. 9-16	Smithville.
	6. G. P.	21,599	51,200	Oct. 20-22	Savannah.
	6. G. P.	18,087	50,300	Oct. 16-19	"
	6. G. P.	18,642	50,800	Oct. 16-19	"
	6. G. P.	18,384	50,800	Oct. 17-19	"
	14. G. P.	20,636	40,800	Oct. 24	Union Springs.
	14. G. P.	20,578	40,800	Oct. 20-29	"
	14. G. P.	20,786	50,000	Oct. 19	Sebastopol.
	14. R. & D.	15,217	40,000	Oct. 20-24	Savannah.
	16. G. P.	20,655	40,000	Oct. 20-24	"
	16. G. P.	20,971	51,600	Oct. 20-24	"
	16. G. P.	21,008	50,800	Oct. 20-24	"
	16. G. P.	21,476	50,800	Oct. 20-24	"
	17. G. P.	21,169	50,000	Oct. 22-24	"
	17. G. P.	21,591	51,000	Oct. 22-24	"
	17. G. P.	20,762	50,000	Oct. 26-27	"
173	17. G. P.	20,850	50,800	Oct. 26-27	"
	19. S. & W.	16,012	50,700	Oct. 26-29	"
	19. S. & W.	20,515	48,000	Oct. 22-24	"
	19. C. of G.	13,114	51,200	Oct. 23-26	"
	19. C. of G.	12,088	40,900	Oct. 26-29	"
	22. C. of G.	12,080	41,000	Oct. 23-Nov. 11	B't B'ham & Col.
	22. S. & W.	5,228	50,300	Nov. 3	Columbus.
	22. S. & W.	5,054	50,400	Nov. 3	"
Nov.	7. G. P.	20,743	50,200	Nov. 18	"
	7. G. P.	20,973	51,000	Nov. 12-17	Sebastopol.
	9. G. P.	21,002	50,000	Nov. 12-17	"
Dec.	16. R. & D.	15,257	40,900	Dec. 22	"
	16. R. & D.	14,084	40,500	Dec. 22	"
	16. R. & D.	14,533	40,900	Dec. 12	Macon.
	16. R. of G.	441	48,000	Dec. 21	Sebastopol.
	16. S. & W.	5,103	50,000	Dec. 23	"
	16. S. & W.	5,192	40,700	Dec. 23	"
	28. G. P.	18,665	51,400	Dec. 23	"
	28. G. P.	18,165	51,100	Jan. 11, '92	Savannah.
	28. G. P.	18,509	51,000	Jan. 9-27	"
	28. G. P.	18,742	50,000	Jan. 6, '92	"
	28. G. P.	18,235	50,000	Dec. 31-Jan. 15	Macon.
	28. G. P.	18,668	50,600	Jan. 6	Sebastopol.
	28. G. P.	21,561	50,600	Jan. 6	"
	28. R. of G.	322	48,000	Jan. 8	"
	28. G. P.	20,507	40,000	Jan. 10	"
174	29. V. & A.	735	51,700	Jan. 7, '92	Savannah.
	29. G. P.	20,445	40,200	Jan. 7, '92	"

Date of shipment.	Initial.	Number.	Weight.	Date unloaded.	Place unloaded.
1892.					
Dec.	29. G. P.	20,814	50,000	Jan. 7, '92	Savannah.
	29. G. P.	20,310	41,000	Jan. 16, '92	"
	29. G. P.	20,436	40,000	Jan. 6, '92	Sebastopol.
	29. G. P.	20,790	50,800	Jan. 27, '92	"
	30. S. & W.	5,179	50,000	Jan. 6, '92	Savannah.
	30. C. of G.	12,048	40,500	Jan. 8, '92	"
	30. C. of G.	13,082	52,500	Jan. 7, '92	"
	30. C. of G.	13,126	51,200	Jan. 7, '92	"
	30. C. of G.	12,126	50,900	Jan. 7-8	"
	30. C. of G.	12,067	40,900	Jan. 7, '92	"
	30. G. P.	21,313	50,800	Jan. 7, '92	Sebastopol.
	30. G. P.	21,568	50,000	Jan. 1, '92	"
	30. G. P.	21,498	50,700	Jan. 5, '92	"
	30. G. P.	20,966	50,500	Jan. 14, '92	"
	30. G. P.	21,122	50,700	Jan. 7, '92	"
	30. A. C.	215	40,800	Jan. 7, '92	"
	31. G. P.	20,870	51,700	Jan. 7, '92	"
	31. G. P.	20,893	51,000	Jan. 7, '92	"
	31. G. P.	21,478	50,700	Jan. 7, '92	"
	31. G. P.	20,368	41,700	Jan. 5, '92	"
	31. G. P.	21,044	51,600	Jan. 5, '92	"
	31. S. C.	23,908	50,000	Jan. 7, '92	"
175	31. S. C.	33,959	56,600	Jan. 5, '92	"
	31. S. C.	3,963	50,500	6-8	"
	31. S. C.	3,984	50,300	6	"
	31. G. P.	20,374	40,400	6	Macon.
Jan.	2. W. N. C.	131	41,000	16	Sebastopol.
	2. S. and W.	5,205	50,800	6	Columbus.
	2. G. P.	20,296	40,400	6	Sebastopol.
	2. C. of G.	13,029	51,000	6	Savannah.
	2. C. of G.	12,021	40,800	6	"
	2. C. of G.	16,039	51,200	6	"
	4. G. P.	20,592	40,500	Feb. 20-22	Gordon.
	4. G. P.	21,259	50,700	Jan. 9	Savannah.
	4. G. P.	21,060	50,400	9	"
	4. G. P.	21,594	50,800	9	"
	4. S. and W.	16,097	50,600	8	"
	4. S. and W.	16,064	50,400	8	"
	4. G. P.	21,312	50,000	16	Sebastopol.
	4. G. P.	21,049	40,800	12	"
	4. G. P.	20,782	50,600	20	Macon.
	4. G. P.	20,704	54,500	12	Sebastopol.
	4. G. P.	21,559	50,900	13	"
	4. G. P.	20,906	50,700	27	"
	4. G. P.	21,163	50,000	20	"
	5. R. of G.	307	48,800	13	"
	5. G. P.	20,457	40,700	14	"
	5. S. and W.	5,013	50,200	15	"
176	5. R. and D.	15,395	40,900	20	Macon.
	5. C. of G.	13,102	50,000	11	Savannah.
	5. G. P.	20,909	50,800	11	"
	5. G. P.	20,773	50,000	11	"
	6. V. and A.	745	50,300	18	Sebastopol.
	6. S. and W.	5,166	50,000	16	"
	6. W. N. C.	126	40,100	15	"
	6. G. P.	20,548	40,600	19	"
	6. G. P.	21,534	50,600	30	"
	6. R. and D.	15,288	40,700	8	"
	6. R. and D.	15,277	41,000	17	S. & A. R. R.
	6. R. and D.	15,287	40,000	14	Savannah.
	7. G. P.	20,613	50,600	12	"
	7. G. P.	20,876	50,500	12	"
	7. G. P.	21,178	50,400	12	"

Date of shipment.	Initial.	Number.	Weight.	Date unloaded.	Place unloaded.
1892.					
Jan.	7. G. P.	21,303	50,200	Jan. 13	Savannah.
	7. R. and D. . .	14,310	41,000	25	Sebastopol.
	7. G. P.	20,783	50,500	26	"
	7. G. P.	21,215	51,000	21	"
	7. G. P.	20,505	40,900	20	Macon.
	7. G. P.	21,446	50,000	19	Sebastopol.
	7. G. P.	20,663	41,800	Feb. 25	Macon.
	8. G. P.	20,593	40,500	Jan. 29	Sebastopol.
	8. G. P.	20,736	50,900	22	"
177	8. R. and D. . .	15,355	41,000	Jan. 23	"
	8. R. and D. . .	14,558	40,000	Jan. 17	"
	8. G. P.	21,256	51,400	Feb. 1	Columbus.
	8. G. P.	21,211	51,100	Jan. 16	Savannah.
	8. G. P.	21,120	50,000	Jan. 13	"
	8. G. P.	20,862	51,000	Jan. 13	"
	9. C. of G.	13,083	50,700	Jan. 26	Sebastopol.
	9. G. P.	21,518	50,500	Jan. 25	"
	9. G. P.	20,434	40,600	Jan. 27	"
	9. G. P.	20,665	40,000	Jan. 21	"
	9. W. N. C.	173	40,000	Jan. 18	Savannah.
	9. V. and A.	759	50,000	Jan. 18	"
	9. V. and A.	706	50,000	Jan. 16	"
	9. C. of G.	12,092	40,900	Jan. 20	"
	15. G. P.	20,825	52,000	Jan. 23	"
	15. G. P.	20,732	50,500	Jan. 29	Sebastopol.
	15. G. P.	20,998	51,000	Jan. 30	"
	15. G. P.	20,765	50,500	Jan. 23	Savannah.
	16. R. and D. . .	15,285	40,500	Jan. 21	"
	16. R. and D. . .	14,314	40,600	Jan. 23	"
	16. S. and W. . .	5,212	51,500	Feb. 23	"
	16. G. P.	18,188	51,000	Jan. 20	"
	16. G. P.	18,479	51,000	Feb. 27	"
	16. S. and W. . .	5,176	51,100	Jan. 28	Sebastopol.
	16. R. of G.	401	48,600	Feb. 26	Savannah.
	16. G. P.	21,276	51,000	Feb. 26	"
178	16. R. and D. . .	15,264	41,900	Feb. 26	"
	16. V. and A.	794	50,100	Feb. 27	"
	19. G. P.	21,587	51,200	Feb. 6	"
	19. C. of G.	13,206	51,500	Feb. 8	"
	19. S. I. C. L. . .	5,072	50,600	Feb. 8	"
	19. V. and A.	741	50,500	Jan. 25	"
	19. G. P.	21,189	51,200	Jan. 25	"
	19. R. and D. . .	15,254	40,300	Jan. 23	"
	19. R. and D. . .	12,018	40,400	Jan. 23	"
	20. C. and W. . .	5,098	50,700	Jan. 31	Sebastopol.
	20. C. and W. . .	13,185	50,900	Feb. 1	"
	20. G. P.	21,076	50,900	Feb. 1	"
	20. G. P.	21,187	50,800	Jan. 25	Savannah.
	20. S. and W. . .	5,029	50,700	Jan. 27	"
	20. G. P.	21,081	50,400	Jan. 25	"
	21. G. P.	21,527	52,400	Feb. 10	Sebastopol.
	21. G. P.	21,533	50,000	Feb. 8	"
	21. G. P.	20,799	50,100	Feb. 12	"
	21. G. P.	20,725	50,200	Feb. 9	"
	21. G. P.	21,473	51,260	Jan. 26	"
	21. G. P.	21,552	50,300	Jan. 28	"
	21. G. P.	20,644	40,100	Jan. 26	Savannah.
	21. G. P.	18,176	52,000	Jan. 27	"
	22. S. and W. . .	16,077	50,900	Jan. 28	"
179	22. G. P.	20,339	40,700	Jan. 27	Crystal Ice Co.
	22. G. P.	21,486	51,000	Jan. 27	Savannah.
	22. V. and A.	746	50,900	Feb. 19	Sebastopol.
	22. G. P.	20,708	50,700	Feb. 11	"

	Date of shipment.	Initial.	Number.	Weight.	Date unloaded.	Place unloaded.
	1892.					
189	Jan. 22	G. P.	21,222	50,700	Feb. 5	Sebastopol.
	22	G. P.	21,039	51,000	Feb. 1	Columbus.
	23	S. and W.	16,094	50,800	Feb. 9	Sebastopol.
	23	S. and W.	16,004	52,100	Feb. 10	"
	23	R. of G.	439	49,000	Feb. 13	"
	23	S. and W.	20,514	49,000	Jan. 28	Savannah.
	23	S. and W.	16,095	50,800	Jan. 27	"
	23	S. and W.	16,043	50,200	Jan. 28	"
	25	C. of G.	13,275	51,500	Jan. 29	"
	25	S. and W.	5,159	50,000	Jan. 30	"
	25	S. and W.	5,044	51,000	Jan. 30	"
	25	G. P.	21,224	50,600	Feb. 11	Sebastopol.
	25	G. P.	20,990	50,600	Feb. 12	"
	26	G. P.	21,433	50,600	Feb. 8	Savannah.
	26	S. and W.	16,008	50,300	Feb. 16	Sebastopol.
	26	R. and D.	15,389	40,900	Feb. 16	"
	26	C. of G.	13,001	50,500	Feb. 3	"
	26	G. P.	18,723	51,000	Jan. 30	Savannah.
	26	G. P.	18,700	51,700	Jan. 30	"
	26	G. P.	18,309	50,300	Feb. 3	"
	26	G. P.	18,450	50,800	Jan. 30	"
	26	G. P.	21,567	50,900	Jan. 30	"
	26	G. P.	21,291	52,000	Jan. 30	Savannah.
	27	C. of G.	13,126	50,100	Feb. 3	"
	27	C. of G.	12,036	40,500	Feb. 1	"
	27	C. of G.	13,008	51,000	Feb. 2	"
	27	G. P.	21,569	50,000	Feb. 1	"
	27	G. P.	21,051	50,900	Feb. 2	"
	27	G. P.	20,964	50,000	Feb. 4	Sebastopol.
	27	N. C.	11,659	45,000	Feb. 4	"
	27	S. and W.	5,243	50,400	Feb. 6	Savannah.
	27	R. and D.	14,502	40,000	Feb. 8	"
	27	V. and A.	742	50,200	Feb. 8	"
	28	I.C.E. & C.L.	2,481	50,200	Feb. 9	"
	28	G. P.	20,902	50,200	Feb. 5	"
	28	S. and W.	5,151	51,300	Feb. 4-5	Wadley.
	28	G. P.	21,152	50,900	Feb. 3	Sebastopol.
	28	S. and W.	20,548	50,000	Feb. 6	"
	29	G. P.	21,241	51,100	Feb. 3	Savannah.
	29	S. and W.	18,001	50,000	Feb. 3	"
	29	C. and E. I.	2,898	40,000	Feb. 4	"
	29	C. of G.	13,058	50,900	Feb. 2	"
	30	G. P.	21,305	50,900	Feb. 2-3	"
	30	G. P.	21,308	50,300	Feb. 8	Macon.
	30	G. P.	21,480	50,000	Feb. 3	Savannah.
	30	R. and D.	14,529	40,200	Feb. 3	"
181	Feb. 9	R. & D.	14,326	40,600	Feb. 11-18	Cedartown.
	9	R. & D.	15,399	40,500	Feb. 13-15	"
	9	G. P.	20,986	50,600	Feb. 17	Chattanooga.
	9	G. P.	21,070	50,600	Feb. 15	Atlanta.
	9	G. P.	21,024	50,000	Feb. 20	"
	9	G. P.	20,319	40,500	Feb. 15	"
	17	C. & W.	5,025	51,000	Feb. 23	Savannah.
	17	R. & D.	15,231	40,900	Feb. 26	"
	17	S. & W.	5,020	51,000	Feb. 23	"
	17	A. & W. P.	3,908	51,700	Feb. 23	"
	17	R. & D.	14,084	41,000	Feb. 24	Atlanta.
	17	W. R. R. R.	23,100	43,500	Feb. 23-26	Cedartown.
	17	S. & W.	16,004	41,600	Feb. 25	Chattanooga.
	17	S. & W.	16,094	44,600	Feb. 23-March 3	Cedartown.
	17	S. & W.	5,161	45,700	Feb. 24	Chattanooga.

Date of shipment.	Initial.	Number.	Weight.	Date unloaded.	Place unloaded.
1892.					
Feb.	17. G. P.	20,905	50,200	March 1	Sebastopol.
	18. C. of G.	13,296	48,200	Feb. 29	See after March 4th.
	18. R. of G.	430	47,000	Feb. 28	Griffin.
	18. S. and W.	16,021	42,700	March 3	"
	18. G. P.	21,271	51,000	March 4	"
	18. G. P.	21,522	49,400	March 1-3	"
	18. R. & D.	15,212	41,900	March 1-3	Cedartown.
	18. C. of G.	13,059	46,000	Feb. 26	"
	18. C. of G.	13,119	45,000	Feb. 26	Savannah.
182	22. S. C.	3,952	52,000	Feb. 25	"
	22. G. P.	20,634	41,400	Mar. 4	Griffin.
	23. G. P.	18,149	51,400	Mar. 1	Savannah.
	23. G. P.	18,416	50,500	Mar. 1	"
	23. E. T. V. & G.	21,136	40,500	Mar. 3	Chatanooga.
	23. G. P.	20,614	43,300	Mar. 1	Atlanta.
	23. G. P.	21,623	52,000	Feb. 26	"
	23. G. P.	21,582	51,000	Feb. 27	Savannah.
	23. S. & W.	5,143	45,500	Mar. 3	"
	24. G. P.	18,364	50,300	Feb. 27	"
	24. G. P.	18,544	50,000	Feb. 27	"
	24. G. P.	18,257	50,000	Mar. 1	"
	24. G. P.	18,002	50,000	Mar. 3	"
	24. G. P.	18,431	52,200	Mar. 1	"
	24. G. P.	18,015	52,000	Feb. 27	"
	24. G. P.	18,618	50,700	Mar. 1	"
	25. A. & W. P.	3,903	50,300	Mar. 1	"
	25. G. P.	20,433	40,000	Mar. 1	"
	25. G. P.	21,600	50,800	Mar. 1	"
	25. G. P.	20,920	50,500	Mar. 1	"
	25. G. P.	21,617	50,600	Mar. 1	"
	25. S. and W.	21,443	50,000	Mar. 1	"
	25. S. and W.	16,037	50,700	Mar. 1	"
	25. G. P.	18,632	51,000	Mar. 1	"
183	30. V. & A.	753	50,000	Feb. 8	Savannah.
	30. R. & D.	15,221	40,700	Feb. 3	"
	30. R. & D.	15,377	40,200	Feb. 4	"
	30. C. of G.	13,068	51,200	Feb. 2	Sebastopol.
	30. C. of G.	13,133	51,600	Feb. 8	Savannah.
	30. R. & D.	14,088	41,300	Feb. 2	Sebastopol.
	30. G. P.	20,735	52,000	Feb. 6	Atlanta.
	30. G. P.	20,456	40,700	Feb. 5	Sebastopol.
	30. G. P.	20,281	40,900	Feb. 6	"
Feb.	1. G. P.	20,958	51,000	Feb. 10	Atlanta.
	1. G. P.	21,264	50,800	Feb. 10	"
	1. G. P.	21,611	50,000	Feb. 5	"
	1. G. P.	21,451	50,700	Feb. 5	"
	1. R. of G.	378	48,000	Feb. 9	"
	1. W. N. C.	114	40,600	Feb. 9	"
	1. C. of G.	13,148	50,200	Feb. 6	Savannah.
	1. C. of G.	13,082	50,900	Feb. 6	"
	1. S. & W.	16,067	51,100	Feb. 6	"
	1. S. & W.	16,031	50,700	Feb. 11	"
	1. S. & W.	16,098	50,000	Feb. 9	"
	1. S. & W.	15,332	40,500	Feb. 12	"
	2. G. P.	20,896	50,900	Feb. 16	"
	2. C. of G.	12,003	40,900	Feb. 9	"
	3. S. I. C. L.	5,191	50,000	Feb. 11	"
	3. R. & D.	15,257	40,000	Feb. 15	Sebastopol.
	3. G. P.	21,021	50,000	Feb. 16	"
184	19. C. of G.	18,587	50,700	Feb. 26	Savannah.
	19. C. of G.	18,659	50,600	Feb. 23	"
	19. C. of G.	18,742	50,800	Feb. 23	"

Date of shipment.	Initial.	Number.	Weight.	Date unloaded.	Place unloaded.
1892.					
Feb.	19. C. of G.	20,565	40,000	Feb. 25	Savannah.
	19. C. of G.	21,306	51,000	Feb. 25	"
	19. C. of G.	18,718	48,000	Feb. 26	"
	19. S. and W.	16,017	50,000	Feb. 27	Atlanta.
	19. G. P.	20,694	40,800	Feb. 25	"
	19. G. P.	20,309	43,000	Feb. 27	Chattanooga.
	19. G. P.	21,109	48,000	Feb. 26	"
	19. S. and W.	5,237	46,000	Mar. 2	"
	19. G. P.	20,534	42,800	Feb. 25	"
	20. G. P.	21,234	50,200	Feb. 27	Savannah.
	20. G. P.	20,314	40,700	Mar. 3	Sebastopol.
	20. G. P.	20,988	51,000	Feb. 26	"
	20. R. and D.	15,291	40,500	Mar. 2	"
	20. R. and D.	14,568	40,000	Mar. 3	"
	20. V. and A.	751	44,000	Feb. 29	Atlanta.
	20. G. P.	20,617	40,000	Feb. 29	"
	20. R. and D.	15,262	43,400	Feb. 26-27	Cedartown.
	20. R. and D.	15,229	40,800		"
	20. R. and D.	13,242	46,600	Mar. 2	Chattanooga.
	20. S. and W.	20,401	41,500	Feb. 29	"
	22. S. and W.	16,076	50,300	Feb. 27	Savannah.
	22. S. and W.	16,065	50,000	Feb. 29	"
	22. S. C.	3,956	52,000	Feb. 25	"
185	26. A. & W. P.	3,920	50,600	Mar. 3	Savannah.
	26. R. & D.	15,539	51,200	Mar. 3	"
	26. G. P.	21,555	50,000	Mar. 4	"
	26. G. P.	21,046	51,200	Mar. 4	"
	26. G. P.	21,529	53,800	Mar. 3	"
	26. G. P.	21,487	53,200	Mar. 2	"
	26. G. P.	20,962	50,000	Mar. 3	"
	26. G. P.	20,611	40,400	Mar. 4	"
	26. G. P.	20,799	50,300	Mar. 4	"
	26. G. P.	20,998	50,000	Mar. 1	"
	26. G. P.	20,752	51,600	Mar. 1	"
	26. G. P.	21,193	46,000	Mar. 4	Chattanooga.
	26. G. P.	21,098	47,300	Mar. 4	"
	27. G. P.	20,833	50,700	Mar. 4	Savannah.
	27. G. P.	20,405	40,500	Mar. 4	"
	27. G. P.	21,591	51,000	Mar. 2	"
	27. G. P.	21,206	50,800	Mar. 2	"
	27. G. P.	18,474	50,500	Mar. 3	"
186	27. G. P.	18,191	50,000	Mar. 4	"
	27. G. P.	20,557	40,000	Mar. 4	"
	27. G. P.	18,079	50,400	Mar. 3	"

19,652,700

In account with Virginia and Alabama Coal Company.

H. R. Dill.

To invoice rend. :	Invoice.	Weight.
Savannah, Ga.		10,465,900
Sebastopol.		5,662,900
S. & A. R. R.		91,200
Columbus.		456,900
Union Springs.		81,600
Macon.		355,800
Crystal Ice Co.		40,700
Atlanta.		892,000
Cedartown.		303,900

Chattanooga.....	448,600
Griffin.....	230,300
Cameron.....	50,000
Work-train.....	50,800
187 Smithville.....	50,700
Ryder.....	338,600
Gordon.....	40,500
Between Birmingham and Columbus.....	41,000
Wadley.....	51,300

19,652,700 lbs.

188 Central Railroad of Georgia in account with the Virginia and Alabama Coal Company.

For coal shipped to D. D. Curran, sup't.

Statement Showing Date of Shipment of Cars Furnished Central Railroad of Georgia Prior to and Including March 4th, 1892, and When and Where Unloaded.

Date of shipment.	Initial.	Number.	Weight.	Date unloaded.	Place unloaded.
1891.					
Oct.	7. G. P.	20,620	41,400	Oct. 29-91	Albany.
	7. G. P.	21,443	51,000	Oct. 14-Oct. 20	Smithville.
	7. G. P.	18,680	50,000	Oct. 14	"
	7. R. & D.	14,531	40,000	Oct. 11-Oct. 20	Americus.
	7. R. & D.	15,257	40,700	Oct. 10-Oct. 16	"
	7. R. & D.	15,201	40,000	Oct. 25	Smithville.
	8. S. & W.	16,011	50,800	Oct. 28	Sebastopol.
	8. S. & W.	5,163	50,400	Oct. 12	Macon.
	9. S. & W.	16,016	50,700	Oct. 28	Sebastopol.
	9. C. of G.	13,245	51,200	Oct. 12	Macon.
	9. C. of G.	13,257	50,000	Oct. 12	"
	9. C. of G.	13,183	50,000	Oct. 12	"
	9. C. of G.	13,269	50,000	Oct. 12	"
	9. S. & W.	5,226	50,500	Oct. 13	Atlanta.
	10. G. P.	20,926	50,800	Oct. 13	Macon.
	10. G. P.	20,637	40,500	Oct. 23	Atlanta.
189	10. G. P.	21,299	50,500	Oct. 13	Macon.
	10. R. & D.	15,237	40,200	Oct. 13	"
	14. R. & D.	14,593	40,000	Oct. 16-Nov. 14	Fort Valley.
	14. W. N. C.	109	40,000	Oct. 17	Macon.
	14. C. of G.	13,263	51,500	Oct. 19	"
	14. S. I. C. L.	5,192	48,000	Oct. 28	Albany.
	14. S. & W.	16,017	50,000	Oct. 17	Macon.
	14. W. of A.	717	50,200	Oct. 19	"
	15. S. & W.	16,092	50,800	Oct. 19	"
	15. S. & W.	5,132	51,600	Oct. 19	"
	15. C. of G.	13,250	52,500	Oct. 21-Oct. 28	Griffin.
	16. G. P.	20,985	50,400	Oct. 19	Macon.
	16. R. & D.	15,222	41,500	Oct. 19	"
	16. S. & W.	5,213	51,800	Oct. 24	Atlanta.
	16. S. & W.	5,221	50,000	Oct. 19	Macon.
	16. S. & W.	5,126	50,800	Oct. 24	"
	17. S. & W.	5,141	50,000	Nov. 5	Columbus.
	17. S. & W.	16,088	50,700	Oct. 22-Nov. 10	Service track.
	17. S. & W.	5,032	50,000	Nov. 5	Troy.
	17. C. of G.	13,213	50,600	Oct. 21	Fufaula.
	17. C. of G.	13,294	50,000	Nov. 6	Macon.
	19. G. P.	20,581	40,800	Oct. 24	"
	19. G. P.	21,557	50,700	Oct. 24	Atlanta.
	19. G. P.	21,697	50,000	Oct. 24	"
	19. G. P.	21,436	50,600	Oct. 23	Macon.
	19. G. P.	20,876	51,200	Oct. 22	"
190	19. G. P.	20,403	41,800	Oct. 22	"

Date of shipment.	Initial.	Number.	Weight.	Date unloaded.	Place unloaded.
1891.					
Oct. 19.	G. P.	21,532	50,000	Oct. 23	Macon.
20.	G. P.	21,470	50,000	Oct. 23	"
20.	G. P.	21,064	50,000	Oct. 26	Atlanta.
191 20.	G. P.	21,526	50,000	Oct. 23, '91	Macon.
20.	G. P.	21,618	50,000	Oct. 23	"
20.	G. P.	21,163	50,200	Oct. 26	"
20.	G. P.	20,772	51,000	Nov. 11	Albany.
20.	R. & D.	14,314	40,000	Oct. 21	Smithville.
20.	C. of G.	12,090	40,500	Nov. 3	Macon.
Dec. 21.	S. & W.	5,173	50,500	Dec. 26	"
21.	S. & W.	5,178	50,000	Jan. 4, '92	Troy, Ala.
21.	G. P.	21,129	51,500	Dec. 28, '91	Macon.
23.	G. P.	20,521	40,000	Dec. 28	Columbus.
23.	G. P.	61,175	50,000	Ryder	"
23.	G. P.	21,164	60,000	Ryder	"
23.	C. of G.	13,153	60,000	Jan. 16, '92	Eufaula.
23.	G. P.	20,916	50,000	Dec. 28, '91	Columbus.
23.	G. P.	20,923	50,000	Feb. 3-9, '92	Smithville.
23.	G. P.	20,948	50,000	Dec. 28, '92	Macon.
23.	V. & A.	799	50,000	Dec. 28	"
23.	C. of G.	13,250	60,000	Dec. 28	"
23.	C. of G.	13,109	60,000	Dec. 28	"
23.	G. P.	21,412	60,000	Dec. 28	"
28.	G. P.	20,791	51,200	Jan. 7, '92	"
28.	G. P.	20,569	40,500	Jan. 9	Sebastopol.
192 28.	R. & D.	15,247	41,000	Dec. 21, '91	Columbus.
28.	C. of G.	13,151	50,600	Dec. 31-Jan. 22	Fort Valley.
29.	C. of G.	13,070	50,700	Jan. 18, '92	Albany.
29.	S. & W.	16,226	51,000	Ryder	"
29.	G. P.	18,373	53,000	Jan. 30	Columbus.
29.	G. P.	20,440	40,000	Jan. 6	Macon.
29.	R. of G.	391	52,000	Jan. 6	Columbus.
29.	G. P.	20,584	40,000	Jan. 4	"
29.	G. P.	21,273	60,000	Jan. 7, '92	Macon.
29.	S. & W.	5,157	56,000	Jan. 5, '92	"
29.	G. P.	18,199	58,000	Jan. 18	"
30.	G. P.	18,326	60,000	Jan. 13	"
30.	G. P.	20,661	40,300	Jan. 4	Columbus.
30.	G. P.	20,817	50,000	Jan. 4	"
30.	G. P.	20,432	51,500	Jan. 8	Savannah.
30.	G. P.	20,819	50,000	Jan. 8	Sebastopol.
30.	G. P.	21,206	50,000	Jan. 6-26	Albany.
30.	G. P.	21,250	60,000	Jan. 4	Columbus.
30.	S. & W.	5,221	58,000	Jan. 6	Macon.
30.	G. P.	20,461	40,000	Jan. 25	Albany.
30.	G. P.	20,771	50,000	Jan. 4	Columbus.
30.	P. of G.	378	50,000	Jan. 4	"
193 30.	G. P.	20,949	50,000	Jan. 4	"
31.	W. N. C.	136	40,900	Jan. 5	Macon.
31.	S. & W.	5,283	50,000	Jan. 8	Savannah.
31.	S. & W.	5,292	50,000	Jan. 5	Macon.
31.	V. & A.	793	50,700	Jan. 9	"
31.	G. P.	21,387	41,000	Jan. 7	"
31.	R. & D.	15,267	40,000	Jan. 5	"
31.	S. & W.	5,021	48,300	Jan. 5	"
31.	G. P.	20,733	51,000	Jan. 8	"
31.	C. of G.	13,115	50,000	Jan. 28	Columbus.
31.	C. of G.	12,009	40,000	Jan. 6	Albany.
31.	S. I. C. L.	5,622	46,000	Jan. 5	Columbus.
31.	G. P.	21,549	60,000	Jan. 4	"
31.	G. P.	20,495	40,000	Jan. 4	"
31.	G. P.	21,308	60,000	Jan. 6	"

Date of shipment.	Initial.	Number.	Weight.	Date unloaded.	Place unloaded.
1891.					
Dec.	31. G. P.	21,473	60,000	Jan. 16	Albany.
	31. G. P.	21,617	60,000	Jan. 7	Col. So. R. R.
	31. G. P.	20,964	50,000	Jan. 18	Macon.
1892.					
Jan.	1. G. P.	21,289	52,400	Jan. 18	"
	1. V. & A.	763	45,000	Feb. 3	Smithville.
	1. G. P.	21,225	51,000	Jan. 7	Savannah.
194	1. G. P.	21,082	49,000	Jan. 4	Columbus.
	1. V. & A.	728	48,000	Jan. 18	Albany.
	1. G. P.	21,135	48,000	Jan. 16	"
	1. G. P.	20,314	41,800	Feb. 11-14	"
	1. R. D.	15,249	41,000	Jan. 7	Macon.
	1. W. N. C.	122	40,000	Jan. 12	Troy.
	2. R. & D.	14,506	40,000	Jan. 6	Columbus.
	2. G. P.	21,424	60,000	Jan. 7	Smithville.
	2. G. P.	20,361	40,000	Jan. 6	Macon.
	2. G. P.	20,911	50,000	Jan. 8	"
	2. G. P.	20,315	40,000	Jan. 17, Feb. 16	Wadley.
	2. R. & D.	15,252	40,000	Jan. 4	Columbus.
	2. W. N. C.	172	40,900	Jan. 6	Macon.
	2. R. & D.	15,253	40,700	Jan. 7	Columbus.
	2. R. & D.	15,041	41,700	Feb. 1-13	Smithville.
	2. C. of G.	10,080	40,000	Jan. 7	Macon.
	4. R. of G.	411	48,800	Jan. 8	"
	4. R. of G.	384	48,000	Jan. 9	"
	4. V. & A.	799	50,500	Jan. 14	"
	4. R. & D.	15,354	40,500	Jan. 8	"
195	4. C. of G.	12,033	41,000	Jan. 9	"
	4. C. of G.	13,247	51,300	Jan. 8	"
	4. S. I. C. L.	26	47,000	Jan. 8	"
	4. C. of S.	13,022	60,000	Jan. 8	"
	4. S. & W.	5,124	56,000	Jan. 8	"
	4. S. & W.	16,010	52,000	Jan. 8	"
	4. S. & W.	16,075	52,000	Jan. 8	"
	5. G. P.	21,536	51,300	Jan. 8	"
	5. G. P.	18,675	50,000	Jan. 9	"
	5. C. of G.	13,200	50,000	Jan. 8	"
	5. S. I. C. L.	5,148	50,900	Jan. 19	"
	5. S. & W.	5,184	50,900	Jan. 8	"
	5. G. P.	18,606	50,200	Jan. 13	Enfauila.
	5. G. P.	21,452	51,000	Jan. 12	Macon.
	5. G. P.	21,497	50,000	Jan. 9	"
	5. G. P.	21,028	50,000	Jan. 9	"
	5. S. & W.	20,529	50,000	Jan. 9	"
	5. R. & D.	15,200	40,000	Jan. 19	"
	5. R. & D.	14,592	40,000	Jan. 14	"
	5. S. & W.	5,280	60,000	Jan. 9	"
	6. V. & A.	797	50,000	Jan. 9	"
	6. G. P.	20,739	50,000	Jan. 14	"
	6. S. & W.	16,067	50,000	Jan. 13	"
196	6. G. P.	21,026	50,000	Jan. 12	"
	6. R. & D.	13,361	40,000	Jan. 15	"
	6. C. of G.	12,024	40,000	Jan. 15	"
	6. N. C.	11,659	42,000	Jan. 11, Jan. 25	Service train.
	6. S. & W.	16,000	50,000	Jan. 18	Macon.
	6. G. P.	20,882	50,000	Ryder-Jan. 12	"
	6. W. N. C.	142	40,000	Jan. 12	"
	6. C. of G.	13,149	50,400	Jan. 10	"
	6. N. C.	12,078	47,300	Jan. 18	"
	6. S. & W.	20,521	50,500	Jan. 9, '92	"
	6. R. & D.	14,569	40,700	Jan. 9	"
	6. R. & D.	15,212	41,000	Jan. 15	"
	6. W. N. C.	163	40,500	Jan. 13	"

Date of shipment.	Initial.	Number.	Weight.	Date unloaded.	Place unloaded.
1892.					
Jan.	6. G. P.	21,189	40,000	Jan. 14	Macon.
	6. G. P.	20,474	40,800	Jan. 15	"
	7. G. P.	21,128	50,600	Jan. 14	"
	7. G. P.	21,455	50,000	Jan. 19	"
	7. R. & D.	15,281	41,200	Jan. 13	"
	7. R. & D.	14,502	40,900	Jan. 18	"
	7. C. of G.	13,206	50,400	Jan. 12	"
	7. S. & W.	5,145	51,000	Jan. 14	Columbus.
197	7. S. & W.	5,243	60,000	Jan. 18	Macon.
	7. G. P.	20,789	50,000	Jan. 15	"
	7. G. P.	21,025	50,000	Jan. 12	"
	7. W. of A.	1,911	50,000	Jan. 11	"
	7. G. P.	21,021	50,000	Jan. 11	"
	7. S. & W.	20,516	50,000	Jan. 14	"
	7. G. P.	20,629	40,000	Jan. 14	"
	7. G. P.	20,776	50,000	Jan. 14	"
	7. S. & W.	5,237	60,000	Jan. 11	"
	7. V. & A.	793	50,000	Jan. 14	Columbus.
	7. G. P.	21,541	60,000	Jan. 15	Macon.
	7. G. P.	21,614	60,000	Jan. 13	"
	7. G. P.	20,594	50,000	Ryder	"
	7. G. P.	5,016	50,000	Jan. 13	"
	7. C. & W.	12,064	40,800	Jan. 12	Columbus.
	8. C. of G.	12,035	41,700	Feb. 2	Macon.
	8. S. & W.	5,250	50,900	Jan. 15	"
	8. G. P.	21,152	50,100	Jan. 18	"
	8. C. of G.	13,140	52,000	Ryder	"
	9. G. P.	20,922	50,000	Jan. 14	"
	9. G. P.	21,435	50,000	Jan. 19	"
	9. G. P.	20,992	50,800	Jan. 14	"
	9. G. P.	20,460	40,600	Jan. 16	"
198	9. C. of G.	13,067	50,700	Jan. 16	Columbus.
	9. S. & W.	5,010	50,500	Jan. 19	Troy.
	9. W. N. C.	133	40,900	Jan. 16	"
	9. C. of G.	12,085	41,000	Jan. 11	Enfaula.
	9. G. P.	21,409	51,100	Jan. 13-25	"
	9. G. P.	18,580	52,600	Jan. 12-25	"
	9. S. & W.	5,127	50,200	Jan. 11-20	"
	11. S. & W.	5,197	60,000	Jan. 15	Macon.
	11. R. & D.	14,529	40,000	Jan. 21	"
	11. G. P.	20,634	40,000	Jan. 20	"
	11. C. of G.	13,242	60,000	Jan. 16	"
	11. G. P.	21,469	60,000	Jan. 15	"
	11. G. P.	21,507	60,000	Jan. 15	"
	11. W. N. C.	110	40,000	Jan. 15	"
	11. G. P.	18,011	60,000	Feb. 16	"
	11. G. P.	18,166	60,000	Jan. 20	"
	12. G. P.	18,305	60,000	Jan. 19	"
	12. G. P.	18,575	60,000	Jan. 19	"
	12. G. P.	18,505	50,000	Feb. 16	"
	12. S. & W.	5,149	60,000	Jan. 20	"
	14. G. P.	21,315	60,000	Jan. 20	"
	14. G. P.	21,151	50,000	Jan. 19	"
199	14. G. P.	21,476	60,000	Jan. 21, '92	Fort Valley.
	14. G. P.	21,403	60,000	Feb. 1	Macon.
	14. G. P.	20,328	40,000	Jan. 2	"
	15. C. of G.	13,038	60,000	Jan. 2	"
	15. G. P.	21,209	50,000	Jan. 2	"
	15. S. & W.	5,207	60,000	Jan. 1	"
	15. R. & D.	15,384	40,000	Jan. 22	"
	15. R. & D.	15,268	40,000	Jan. 19	"
	15. R. & D.	14,340	40,000	Jan. 19	"
	15. W. N. C.	114	40,000	Jan. 21	"

Date of shipment.	Initial.	Number.	Weight.	Date unloaded.	Place unloaded.
1892.					
Jan.	15. S. & W.	16,062	60,000	Jan. 25	Eufaula.
	15. S. & W.	5,163	60,000	Jan. 22	Macon.
	15. G. P.	21,607	60,000	Jan. 19-Oct. 13	Wadley.
	15. G. P.	21,102	50,000	Jan. 22	Macon.
	15. C. of G.	13,250	50,700	Jan. 20	"
	15. C. of G.	13,261	50,800	Jan. 26	Columbus.
	15. C. of G.	12,003	40,800	Jan. 28	Fort Gaines.
	15. C. of G.	12,127	50,900	Feb. 10	Eufaula.
	15. C. & W.	5,023	50,000	Jan. 27	Macon.
200	15. G. P.	20,751	50,000	Jan. 23	"
	15. G. P.	21,464	60,000	Jan. 23	"
	16. G. P.	20,847	50,000	Ryder	"
	16. G. P.	20,554	40,800	Jan. 21	Col. So. R'y.
	16. G. P.	20,986	50,600	Feb. 1	Macon.
	16. G. P.	21,298	50,000	Jan. 23	Brantley.
	16. G. P.	21,021	50,000	Jan. 25-30	Smithville.
	16. G. P.	20,866	50,500	Jan. 28-Feb. 4	"
	16. G. P.	20,828	50,700	Jan. 28-Feb. 4	"
	16. G. P.	21,584	51,000	Jan. 26	Troy.
	18. G. P.	21,191	50,000	Jan. 23	Macon.
	18. C. of G.	12,001	40,000	Jan. 25	"
	19. G. P.	21,501	60,000	Jan. 25	"
	19. G. P.	21,583	60,000	Jan. 26	"
	19. G. P.	20,721	51,200	Jan. 26	"
	19. G. P.	21,614	50,900	Jan. 25	"
	19. G. P.	21,572	50,700	Jan. 21	"
	19. G. P.	20,739	51,000	Jan. 25	By Col. So. R'y.
	19. S. & W.	5,184	50,600	Jan. 21	Columbus.
	20. G. P.	21,475	50,800	Jan. 23, Feb. 10	Macon.
	20. G. P.	20,945	50,800	Jan. 25, Jan. 30	Americus.
201	20. R. & D.	15,246	40,800	Feb. 12	Smithville.
	20. R. & D.	14,580	40,500	Ryder	Macon.
	20. G. P.	21,259	50,600	Jan. 25	"
	20. G. P.	20,918	51,500	Jan. 23	"
	20. G. P.	20,591	40,700	Jan. 23	"
	20. G. P.	20,801	51,000	Jan. 25	"
	20. G. P.	20,922	50,700	Jan. 25	"
	20. G. P.	20,281	40,000	Jan. 25	"
	20. G. P.	21,106	40,000	Feb. 2	"
	20. R. & D.	14,100	40,000	Feb. 1	"
	20. C. of G.	13,073	60,000	Feb. 1	"
	20. G. P.	21,088	50,000	Jan. 23-Feb. 2	"
	21. S. & W.	5,156	51,400	Jan. 25	Columbus.
	21. G. P.	20,456	40,800	Jan. 25	Macon.
	21. M. & C.	22,904	51,100	Jan. 30	"
	21. G. P.	21,410	51,000	Feb. 16	"
	21. G. P.	21,004	50,800	Feb. 1	"
	21. G. P.	21,506	60,000	Jan. 26	Loaned Ga. Mid.
	21. S. & W.	5,213	60,000	Jan. 26	"
			1,373,630		
202	22. V. & A.	797	50,800	Jan. 27, '92	Macon.
	22. C. of G.	13,183	51,200	Jan. 20	"
	22. C. of G.	13,097	50,900	Jan. 27	"
	22. C. of G.	13,122	50,400	Jan. 28	"
	22. C. of G.	13,086	50,200	Jan. 30	"
	22. G. P.	21,557	50,600	Jan. 27	"
	23. G. P.	20,469	41,000	Jan. 27	"
	23. G. P.	20,621	40,800	Jan. 27	"
	23. G. P.	21,411	50,000	Jan. 27	"
	23. G. P.	20,542	40,900	Feb. 3	Eufaula.
	23. G. P.	20,979	50,400	Feb. 8	"
	23. G. P.	21,050	50,900	Jan. 29	Macon.

Date of shipment.	Initial.	Number.	Weight.	Date unloaded.	Place unloaded.
1892.					
Jan.	S. & W.....	5,175	50,200	Jan. 29	Macon.
	S. & W.....	16,070	50,000	Feb. 29-Mar. 4	Smithville.
	G. P.	20,440	40,000	Feb. 16	Macon.
	G. P.	21,517	60,000	Feb. 12	"
	G. P.	18,024	50,800	Feb. 1	Columbus.
	G. P.	18,701	50,800	Jan. 30	"
	S. & W.....	16,069	50,600	Jan. 31	"
	S. & W.....	16,059	51,000	Jan. 30	"
	S. & W.....	16,053	50,000	Jan. 30	"
203	G. P.	18,469	41,000	Feb. 18	Macon.
	G. P.	18,527	51,700	Feb. 16	"
	V. & A.....	722	50,000	Feb. 15	"
	V. & A.....	720	50,600	Feb. 15	"
	R. & D.....	14,169	40,000	Feb. 12	"
	R. & D.....	15,295	40,000	Feb. 25	Columbus.
	C. of G.	13,101	60,000	Feb. 1, Feb. 19	Albany.
	S. & W.....	16,035	50,600	Feb. 13	Macon.
	S. & W.....	16,090	50,800	Feb. 12	"
	S. & W.....	5,201	60,000	Feb. 13	"
	G. P.	21,039	50,300	Feb. 17	Albany.
	G. P.	21,119	51,200	Feb. 1	Columbus.
	G. P.	18,493	50,600	Jan. 28	"
	G. P.	18,643	51,600	Feb. 1	"
	G. P.	20,507	40,000	Feb. 24	Macon.
	C. of G.	13,125	51,000	Feb. 19	Columbus.
	S. & W.....	5,143	51,000	Jan. 28	Col. So. R'y.
	G. P.	20,541	40,000	Feb. 8	Macon.
	C. of G.	13,132	60,000	Feb. 24	"
	V. & A.....	714	50,000	Feb. 20	Albany.
	R. & D.....	15,281	40,700	Feb. 25	"
204	V. & A.....	739	50,000	Feb. 22	Loaned Muscogee Mills.
	S. P.	20,846	51,300	Feb. 18	Macon.
	R. & D.....	14,549	40,000	Feb. 25-Mar. 1	Brantley.
	G. P.	21,443	50,200	Feb. 21	Columbus.
	G. P.	21,600	51,000	Feb. 12	Macon.
	R. & D.....	21,617	50,700	Feb. 21	Columbus.
	G. P.	20,816	50,600	Mar. 3	"
	R. & D.....	14,592	40,000	Feb. 2	"
	R. & D.....	15,384	40,000	Jan. 30	"
	S. & W.....	16,085	60,000	Jan. 30	"
	G. P.	21,102	50,000	Feb. 15	Enfaula.
	G. P.	18,545	60,000	Feb. 3	Columbus.
	G. P.	20,504	40,900	Feb. 9	Macon.
	G. P.	21,576	50,500	Feb. 1	Columbus.
	W. R.	23,089	50,000	Feb. 2	"
205	C. of G.	13,162	53,000	Feb. 3, '92	Smithville.
	G. P.	21,239	50,600	Feb. 11	Columbus.
	C. & W.....	5,025	51,800	Feb. 23	Savannah.
	G. P.	21,616	50,800	Feb. 25	Macon.
	G. P.	18,492	60,000	Feb. 8	Columbus.
	G. P.	20,627	40,000	Feb. 5-Mar. 3	"
	G. P.	20,987	50,000	Feb. 15	Macon.
	G. P.	20,469	40,700	Feb. 25-Mar. 25	"
	G. P.	20,945	50,000	Feb. 8-20	Work-train.
	S. & W.....	5,230	50,300	Mar. 1	Enfaula.
	G. P.	21,128	50,800	Mar. 20	Macon.
	G. P.	20,931	50,600	Feb. 20	"
	G. P.	20,920	50,400	Feb. 19	Columbus.
	G. P.	20,385	40,800	Feb. 19	"
	R. & D.....	15,313	40,800	Feb. 23	"
	R. & D.....	15,396	40,400	Feb. 20	Macon.
	R. & D.....	15,385	40,200	Feb. 26	Troy.
	G. P.	20,943	50,300	Feb. 19	Columbus.
206	G. P.	20,688	41,000	Feb. 23	"

Date of shipment.	Initial.	Number.	Weight.	Date unloaded.	Place unloaded.
1892.					
Jan.	16. G. P.	21,128	50,400	Feb. 22	Macon.
	16. G. P.	20,753	50,000	Feb. 20	Columbus.
	16. S. & W.	5,127	50,900	Feb. 23	"
	16. C. of G.	13,027	50,600	Feb. 25	Macon.
	16. G. P.	20,281	41,300	Feb. 23	Columbus.
	16. G. P.	20,456	44,000	Feb. 23	"
	16. G. P.	21,222	51,000	Feb. 23	"
	16. R. & D.	14,564	41,600	Feb. 24	"
	16. R. & D.	14,550	44,000	Feb. 24	"
	16. S. & W.	5,277	42,400	Feb. 19	"
	16. C. of G.	13,139	45,200	Feb. 19	Macon.
	16. C. of G.	13,059	40,000	Feb. 24	Sebastopol.
	16. C. of G.	13,044	46,200	Feb. 23	Columbus.
	16. S. & W.	5,032	45,800	Feb. 22	Macon.
	16. S. & W.	16,048	43,000	Feb. 23	Columbus.
	16. G. P.	21,303	48,000	Feb. 25	Macon.
	16. R. of G.	360	42,700	Feb. 22	"
	17. G. P.	21,535	51,000	Ryder	"
	17. G. P.	21,140	50,800	Feb. 26	"
	17. C. of G.	13,209	57,300	Feb. 25	"
207	17. C. of G.	13,186	50,500	Feb. 26	"
	17. R. of G.	421	49,000	Mar. 1	"
	17. L. & N.	26,992	40,000	Feb. 24	"
	17. S. & W.	5,085	44,000	Feb. 23	"
	17. A., S. C. & L. S.	831	44,000	Feb. 23	"
	17. G. P.	20,515	40,000	Feb. 23	"
	17. G. P.	20,989	48,400	Feb. 24	"
	17. G. P.	20,576	40,000	Feb. 29	"
	17. S. C.	3,977	44,000	Feb. 29	"
	17. R. & D.	15,226	43,400	Feb. 25	"
	18. R. & D.	21,167	50,700	Feb. 29	"
	18. G. P.	21,510	50,700	Feb. 25	"
	18. G. P.	5,188	50,200	Feb. 24	"
	18. S. & W.	5,285	50,000	Feb. 26	"
	18. C. of G.	13,124	50,500	Feb. 23	"
	18. G. P.	13,245	51,000	Feb. 23	"
Mar.	2. G. P.	20,924	51,000	Ryder—Feb. 23	"
Jan.	22. G. P.	21,442	50,800	Feb. 27, Mar. 3	Albany.

19,205,000

208 In account with Virginia and Alabama Coal Company.
D. D. Curran.

To invoice rend.:	Invoice.	Weight.
Albany		770,700
Smithville.		722,700
Americus.		131,500
Fort Gaines.		50,900
Sebastopol.		232,000
Atlanta.		293,500
Fort Valley.		150,600
Griffin.		52,500
Service train.		90,700
Work-train.		50,000
Troy.		322,600

Eufaula	709,400
Savannah	204,300
Brantley	90,000
Ga. Mid.	120,000
-ol. So.	202,500
Wadley	100,000
Muscogee Mills	50,000
Columbus	3,153,000
Macon	11,202,600
— ?	505,500
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	19,205,000

Endorsement: Central Railroad and Banking Company in account with Virginia and Alabama Coal Company. Coal delivered prior to March 4th, 1892, 45,307,700. Report No. 1 of C. H. Schooler and W. B. Starke. Filed February 22d, 1893. L. M. Erwin, deputy clerk.

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Letter from Starke to Schooler.

WASHINGTON, D. C., Feb. 11th, 1893.

Mr. C. H. Schooler, Birmingham, Ala.

DEAR SIR: Enclosed herewith I return your statements of the Virginia and Alabama Coal Company and the Sloss Iron and Steel Company accounts which I have signed according to directions on that line.

I regret very much the delay to the papers in my hands, which was unavoidable, owing to the fact that you did not furnish me with a copy of the Sloss account for file as requested, and which I had to have made, etc.

You will note several differences between our record of the Virginia and Alabama account which I have indicated on your statement with red ink, majority of which are immaterial. I do, however, except to the following items appearing on your Richmond and Danville statements, or for period to March 4th, inclusive:

(D. D. C.)

January 15th, G. P., 21607, U—Wadley, January 19th, October 13th. In what year is October 13th? If 1892, this car should be transferred from R. & D. to receivers' C. R. R. account.

(D. D. C.)

February 2d, G. P., 20469, U—Macon, February 25, unloading date should be March 25th, and car transferred to C. R. R. receivers' account.

(H. R. D.)

February 19th, G. P., 21119, U—Atlanta, May 23d, 1892. You seem to have omitted this car, and which is chargeable to receivers' C. R. R. account.

(H. R. D.)

February 26th, C. of G., 13075, U—Chattanooga, March 4th.

February 17th, C. of G., 13104, U—Chattanooga, February 22d.

You have these cars on your receivers' C. R. R. account.

The cars should be eliminated or your dates changed. Please advise your action on this line.

Yours truly,

W. B. STARKE,

Chief Clerk Statistical Department, R. & D. R. R. Co.

210 *Report No. 2 of L. H. Schooler and W. B. Starke, Experts on Part Virginia and Alabama Coal Company.*

Central Railroad of Georgia in account with the Virginia and Alabama Coal Company.

Cars unloaded after March 4, 1892.

	Pounds.
Savannah	2,601,000
Wadley	235,000
Spartanburg	293,300
McCormick	131,600
Port Royal	262,100
Columbus (Georgia Midland railway)	50,700
Eufaula	40,500
Americus	50,100
Troy	41,000
Smithville	384,700
Albany	90,000
Fitzpatrick	40,100
Fort Gaines	50,000
Union Springs	40,800
Cedartown	720,100
Rome	47,000
Chattanooga	586,600
Griffin	1,044,800
Sebastopol	2,107,200
Atlanta	1,009,600
Macon	1,640,700
Columbus	586,300
Augusta	1,156,900
	<hr/>
	13,210,500

This is to certify that the above checkings are correct as taken from the records of the Central Railroad and Banking Company of

Georgia. The checkings were made personally by the undersigned.

C. H. SCHOOLER,
Representing Virginia and Alabama Coal Company.
W. B. STARKE,
Chief Clerk Statistical Department, R. & D. R. R. Co.

211 Central Railroad of Georgia in account with the Virginia & Alabama Coal Company.

Record of Cars Unloaded Between Dates.

Date of shipment.	Initial.	Number.	Weight.	Date unloaded.	Place unloaded.
Feb. 19.	R. & D.	14,561	41,000	Feb. 25-Mar. 8	Cedartown.
22.	G. P.	20,849	51,000	Feb. 26-Mar. 14	Carrollton.
22.	C. of G.	13,262	45,000	Feb. 26-Mar. 18	"
24.	C. of G.	13,100	47,000	Feb. 29-Mar. 21	"
24.	C. of G.	13,216	45,000	Feb. 29-Mar. 22	"
25.	G. P.	21,513	50,400	Mar. 2-Mar. 21	Cedartown.
27.	G. P.	20,470	40,000	Mar. 1-Mar. 15	Carrollton.
Jan. 16.	G. P.	20,731	50,200	Jan. 19-Mar. 7	Wadley.
22.	C. of G.	13,204	50,400	Feb. 29-Mar. 7	Albany.
Feb. 19.	S. & W.	5,282	43,000	Feb. 25-Mar. 8	Wadley.
16.	S. & W.	16,022	42,000	Feb. 25-Mar. 4	2 miles of Waynesboro.
			505,000		

Cedartown	91,400
Carrollton	228,000
Wadley	93,200
Albany	50,400
Waynesboro	42,000
505,000 lbs.	

212 This is to certify that the above checkings are correct as taken from the records of the Central Railroad and Banking Company of Georgia. The checkings were made personally by the undersigned.

C. H. SCHOOLER,
Representing Virginia and Alabama Coal Company.
W. P. STARKE,
Chief Clerk Statistical Department, Richmond & Danville Railroad Company.

213 Central Railroad of Georgia in account with the Virginia and Alabama Coal Company.

Cars Unloaded after March 4th, 1892.

Shipment.	Initial.	Number.	Weight.	Date unloaded.	Place unloaded.
1891.					
Dec. 28.	C. of G.	13,113	50,600	Mar. 19	Augusta.
28.	G. P.	20,868	50,300	Mar. 19	"
29.	N. G. P. O.	43,607	50,600	April 5	Spartanburg.
29.	C. R. & C.	1,017	34,000	Mar. 22	Augusta.
30.	C. of G.	13,212	50,000	Mar. 22	"
30.	G. P.	21,492	50,300	Mar. 22	"
30.	G. P.	20,942	50,700	Mar. 22	"
31.	S. I. C. L.	5,610	47,000	Mar. 21	"
31.	C. of G.	13,150	50,000	Mar. 21	"

Shipment.	Initial.	Number.	Weight.	Date unloaded.	Place unloaded.
1892.					
Feb.	2. G. P.	20,578	40,000	Mar. 11	Augusta.
	2. C. of G.	13,230	48,000	Mar. 24	"
	16. E. & T. H.	3,390	48,200	Mar. 16	"
	16. C. of G.	13,222	50,500	Mar. 8	Spartanburg.
	16. G. P.	20,897	50,600	Mar. 7	Macon.
	17. R. & D.	14,581	40,200	Mar. 10	McCormick.
	17. G. P.	20,325	40,000	April 1	Wadley.
	19. G. P.	15,383	40,000	Mar. 16	Spartanburg.
	19. G. P.	20,977	50,800	Mar. 22	"
	19. R. & D.	21,229	52,000	April 1	Wadley.
214	19. R. & D.	21,302	50,000	Mar. 25	Augusta.
	19. R. & D.	15,287	40,000	April 1	Wadley.
	19. R. & D.	20,879	51,000	April 13	Spartanburg.
	19. R. & D.	15,296	40,900	Mar. 20	McCormick.
	19. G. P.	21,449	51,000	April 1	Wadley.
	20. S. & W.	16,003	50,500	Mar. 26	Augusta.
	20. C. of G.	13,046	51,000	Mar. 26	"
	20. S. I. C. L.	5,072	50,300	Mar. 25	Port Royal.
	23. G. P.	20,944	50,500	April 4	McCormick.
	23. G. P.	20,941	50,400	April 8	Spartanburg.
	23. S. & W.	16,076	50,700	Mar. 28	Augusta.
	23. S. & W.	16,056	50,600	Mar. 28	"
	23. S. & W.	5,154	50,000	Mar. 14	"
	25. G. P.	18,546	50,000	Mar. 26	"
	25. G. P.	18,369	50,900	Mar. 14	"
	25. G. P.	18,047	51,000	Mar. 14	"
	25. G. P.	20,474	40,800	Mar. 29	"
	25. W. N. C.	126	40,300	April 2-4	Port Royal.
	29. S. & W.	5,013	45,000	Mar. 29	"
	29. S. & W.	20,530	41,200	Mar. 29	"
	29. W. of A.	1,946	40,000	Mar. 24	"
215	29. R. & D.	15,385	43,600	Mar. 7	Augusta.
	29. S. & W.	5,038	41,600	Mar. 8	"
	29. C. of G.	13,073	45,300	Mar. 17	Port Royal.
Jan.	8. R. of G.	429	48,000	Mar. 5	Columbus.
	19. S. & W.	5,296	50,700	Mar. 15-5	Ga. Mid. R'y.
	20. V. & A.	713	50,700	Mar. 8	Macon.
	21. L. & N.	34,190	51,600	Mar. 26	Columbus.
	21. R. & D.	14,311	40,500	Mar. 7-12	Eufaula.
	23. S. & W.	16,032	50,100	Mar. 5-4	Americus.
	27. G. P.	20,298	41,000	Mar. 12	Troy.
	27. W. N. C.	119	40,700	Mar. 17-21	Smithville.
	25. S. & W.	16,015	50,000	April	Wadley.
			2,451,700		
216	27. V. and A.	782	50,000	March 17-23	Albany.
	28. W. N. C.	159	40,000	March 5	Columbus.
	29. V. and A.	769	50,000	March 5	"
	29. S. and W.	16,018	50,700	Mar. 5	Columbus.
	30. G. P.	20,451	40,100	Mar. 4	Fitzpatrick.
Feb.	2. G. P.	20,333	40,000	Mar. 8	Macon.
	3. G. P.	20,829	50,000	Mar. 8	"
	3. S. & W.	5,199	50,700	Mar. 8-Mar. 12	Smithville.
	3. C. of G.	13,187	52,200	Mar. 8	Columbus.
	16. G. P.	20,671	40,600	Mar. 18-Mar. 12	Smithville.
Mar.	1. G. P.	20,565	40,400	Mar. 11	Macon.
	21. G. P.	20,504	41,000	Mar. 11	"
	1. G. P.	20,854	50,700	Mar. 10	"
	1. G. P.	20,674	41,900	Mar. 11	"
	1. A. S. C. L. L.	906	50,000	Mar. 12	"
	1. R. & D.	15,372	41,000	Mar. 12	"
	1. C. of G.	13,243	50,500	Mar. 8	"
	1. G. P.	21,571	50,300	Mar. 5	Columbus.

Shipment.	Initial.	Number.	Weight.	Date unloaded.	Place unloaded.
1892.					
Mar.	1. G. P.	21,423	50,000	Mar. 5	Columbus.
	1. G. P.	21,601	51,400	Mar. 11	Macon.
	1. G. P.	21,311	51,900	Mar. 11	"
	1. C. of G.				
217	1. R. & D.	15,396	40,800	Mar. 5	Columbus.
	2. G. P.	20,301	40,200	Mar. 10	Macon.
	2. G. P.	20,772	50,000	Mar. 5	"
	2. G. P.	20,894	50,700	Mar. 5	"
	2. V. & A.	704	50,700	Mar. 10	"
	2. G. P.	20,759	50,600	Mar. 22	"
	2. G. P.		51,100	Mar. 9	Augusta.
	2. G. P.	20,468	40,400	Mar. 10	Macon.
	2. C. of G.	13,193	50,500	Mar. 10	"
	2. C. of G.	13,065	51,800	Mar. 10	"
	3. S. & W.	5,191	50,300	Mar. 9	"
	3. G. P.	21,460	50,500	Mar. 9	"
	3. G. P.	21,532	50,000	Mar. 9	"
	3. V. & A.	798	51,000	Mar. 12	"
	3. C. of G.	13,211	50,900	Mar. 9	"
	3. C. of G.	13,203	50,800	Mar. 9	"
	3. G. P.	21,218	50,000	Mar. 12	"
	3. G. P.	21,466	51,200	Mar. 8	Columbus.
	3. G. P.	20,647	40,500	Mar. 12	Macon.
	3. G. P.	18,155	50,300	Mar. 8	Smithville.
	3. S. & W.	16,017	50,000	Mar. 9-Mar. 29	Ft. Gaines.
218	3. V. & A.	708	50,700	Mar. 17	Macon.
	4. C. C. & C.	3,009	50,000	Mar. 10	"
	4. R. of G.	367	50,100	Mar. 17	"
	4. G. P.	21,448	50,800	Mar. 8	Smithville.
	4. G. P.	20,675	40,800	Mar. 11	Union Springs.
	4. G. P.	20,821	50,500	Mar. 21	Macon.
	4. G. P.	21,306	50,600	Mar. 8	Smithville.
	4. G. P.	20,694	40,400	Mar. 11-Mar. 22	Albany.
	4. G. P.	20,549	50,500	Mar. 8	Smithville.
	4. G. P.	21,451	50,500	Mar. 19	"
	4. C. of G.	13,088	50,700	Mar. 9	Columbus.
	4. C. of G.	13,146	50,800	Mar. 8	"
	4. V. & A.	746	50,400	Mar. 17	Macon.
	4. V. & A.	728	50,000	Mar. 21	Savannah.
1892.					
Mar.	22. G. P.	20,284	49,000	May 30	Sebastopol.
	25. G. P.	20,927	50,800	Mar. 30-May 30	"
	26. V. & A.	735	50,400	Mar. 31-May 31	"
	28. L. & N.	34,444	51,200	Mar. 7-May 7	"
	29. C. of G.	13,289	50,800	Mar. 30-May 30	"
	29. R. & D.	15,215	40,000	May 31	"
219					
Feb.	3. G. P.	21,147	50,000	May 27	"
	17. C. R. & C.	1,025	41,500	May 30	Atlanta.
	17. C. R. & C.	21,148	45,000	May 9	"
	17. C. R. & C.	20,703	49,200	May 28	"
	17. C. R. & C.	21,286	47,600	May 27	"
	17. C. of G.	13,104	40,500	Feb. 22	Chattanooga.
	17. C. of G.	13,259	46,300	Mar. 15-Mar. 16	Cedartown.
	17. G. P.	21,160	48,500	Mar. 19-Mar. 24	"
	17. G. P.	20,838	46,300	Mar. 17	Sebastopol.
	17. G. P.	20,438	46,600	Mar. 21	"
	17. G. P.	21,527	51,200	Mar. 18-May 18	"
	18. G. P.	20,436	43,000	Mar. 14-Mar. 15	Cedartown.
	18. S. & W.	5,087	43,400	May 18	Sebastopol.
	18. S. C.	3,982	43,600	May 18	"
	19. S. & W.	16,000	50,600	Mar. 11-Mar. 1	Savannah.
	19. C. of G.	13,038	51,000	Mar. 16	"

Shipment.	Initial.	Number.	Weight.	Date unloaded.	Place unloaded.
1892.					
Feb.	19. G. P.	20,400	40,500	June 2	Atlanta.
	19. G. P.	21,166	50,700	Mar. 19	"
	19. G. P.	20,695	42,000	Mar. 5	"
	19. R. & D.	14,538	41,000	Mar. 11	Chattanooga.
	19. G. P.	20,299	44,000	Mar. 11-Mar. 14	Griffin.
220	19. G. P.	20,804	49,400	Mar. 14	Chattanooga.
	19. C. of G.	12,052	43,400	Mar. 11	"
	19. R. of G.	350	44,400	April 7	Savannah.
	19. S. & W.	5,234	46,400	Mar. 22	Sebastopol.
	20. G. P.	21,048	50,500	Mar. 17, Feb. 24	Savannah.
	20. S. & W.	5,001	45,800	May 23	Atlanta.
	20. R. & D.	15,230	42,300	May 31	"
	20. G. P.	20,566	40,000	May 31	"
	20. W. N. C.	118	41,000	Mar. 21-Mar. 29	Griffin.
	20. R. & D.	14,512	40,300	Mar. 12-Mar. 14	Cedartown.
	20. S. & W.	5,246	44,300	Mar. 4	Chattanooga.
	22. S. C.	5,963	50,900	Mar. 16	Savannah.
	22. S. & W.	5,291	45,000	Mar. 6	Griffin.
	22. G. P.	20,901	49,500	Mar. 19-Mar. 22	Cedartown.
	22. R. & D.	14,535	42,000	Mar. 10	Griffin.
	23. G. P.	18,126	50,800	Mar. 17	Savannah.
	23. G. P.	21,474	51,300	Mar. 18	Griffin.
	23. G. P.	20,527	45,900	Mar. 13	"
	23. G. P.	20,817	47,000	Mar. 11	Rome.
	23. C. of G.	13,085	45,000	Mar. 13	Griffin.
	23. R. & D.	15,233	44,000	Mar. 11	"
221	23. S. & W.	5,224	45,000	Mar. 23	Sebastopol.
	23. S. & W.	5,258	48,000	Mar. 26	"
	23. G. P.	20,700	40,400	Mar. 22	"
	23. G. P.	20,827	52,600	Mar. 5	"
	23. G. P.	21,275	53,200	Mar. 5	"
	23. G. P.	21,560	50,000	May 23	Atlanta.
	23. G. P.	20,717	47,000	Mar. 21	"
	24. R. & D.	15,314	41,000	Mar. 11	Savannah.
	24. G. P.	21,424	52,500	Mar. 4	Sebastopol.
Feb.	24. C. of G.	13,264	46,000	Mar. 9-Mar. 11	Savannah.
	24. R. & D.	15,221	41,900	Mar. 7	Sebastopol.
	24. G. P.	21,605	52,000	Mar. 9	"
	24. S. & W.	5,275	51,000	Mar. 10	"
	24. G. P.	20,305	43,400	Mar. 18-Mar. 19	Cedartown.
	24. R. & D.	15,316	47,500	Mar. 19	Griffin.
	24. S. & W.	16,025	43,000	Mar. 24	"
	24. S. & W.	5,172	45,600	Mar. 25	"
	24. C. of G.	13,194	47,000	Mar. 19	"
	24. G. P.	20,604	41,500	Mar. 11	Savannah.
222	24. S. & W.	5,109	50,700	Mar. 21	Sebastopol.
	24. R. & D.	15,381	41,000	Mar. 13	"
	24. R. & D.	15,227	42,000	Mar. 16	"
	24. G. P.	21,524	50,500	Mar. 9	"
	24. G. P.	20,543	39,000	Mar. 11-Mar. 10	"
	24. L. & N.	16,046	50,400	Mar. 11	Savannah.
	24. W. N. C.	171	40,000	Mar. 11	Sebastopol.
	24. U. P.	20,636	40,500	Mar. 11	"
	24. A. & N. P.	2,054	50,100	Mar. 11	"
	24. R. & D.	15,288	45,000	Mar. 14	Cedartown.
	24. G. P.	21,548	51,000	Mar. 5-Mar. 7	Griffin.
	24. G. P.	20,737	51,000	Mar. 27	"
	24. G. P.	20,568	41,000	April 12	Chattanooga.
	24. G. P.	21,525	51,000	Mar. 21	Griffin.
	24. G. P.	21,129	47,200	Mar. 30	Cedartown.
	24. R. & D.	14,567	43,700	Mar. 7-Mar. 8	Sebastopol.
	24. C. of G.	12,015	44,700	Mar. 12	"
	24. W. of A.	1,908	51,600	Mar. 5	Savannah.
	24. G. P.	21,226	50,900	Mar. 8	"

Shipment.	Initial.	Number.	Weight.	Date unloaded.	Place unloaded.
1892.					
Feb.	24. G. P.	21,042	50,600	Mar. 18	Savannah.
	24. W. of A.	1,927	51,000	Mar. 21	Sebastopol.
	24. W. M. C.	141	40,900	Mar. 15	"
223	24. S. & W.	16,074	50,000	Mar. 7	"
	24. G. P.	20,592	40,800	Mar. 19	"
	24. G. P.	20,912	50,700	Mar. 26	Savannah.
	24. S. & W.	20,523	50,700	Mar. 11	Sebastopol.
	24. R. & D.	15,284	40,600	Mar. 10	"
	24. V. & A.	701	50,600	Mar. 17	Savannah.
	24. G. P.	21,563	51,000	Mar. 12	Sebastopol.
	24. G. P.	21,542	50,600	Mar. 19	Savannah.
	24. V. & A.	788	46,000	Mar. 11	Cedartown.
	24. C. of G.	12,121	44,000	Mar. 10-Mar. 29	"
	24. C. of G.	13,075	47,000	Mar. 16	Chattanooga.
	24. G. P.	20,699	44,000	Mar. 4	Cedartown.
	24. G. P.	21,568	51,400	Mar. 15-Mar. 17	"
	24. G. P.	21,493	52,000	Mar. 10-Mar. 29	Chattanooga.
	24. S. & W.	5,277	51,700	Mar. 10	Savannah.
	24. R. & D.	13,323	40,000	Mar. 12	Sebastopol.
	24. V. & A.	773	50,600	Mar. 16	"
	24. C. of G.	12,025	40,500	Mar. 10	Savannah.
	24. C. of G.	13,270	50,900	Mar. 12	Sebastopol.
	24. W. N. C.	107	40,800	Mar. 16	"
224	24. G. P.	20,986	50,200	Mar. 17	"
	24. S. & W.	5,267	50,300	Mar. 10	Savannah.
	24. G. P.	20,748	50,500	Mar. 11	"
	24. G. P.	21,010	51,400	Mar. 5	"
	24. G. P.	20,990	50,500	Mar. 5	"
	24. S. & W.	5,002	43,500	Mar. 16	Griffin.
	27. G. P.	20,334	44,000	Mar. 11	Cedartown.
	27. G. P.	20,625	41,000	Mar. 6-7	"
	27. G. P.	20,735	47,800	April 13	Griffin.
	27. G. P.	20,644	41,500	Mar. 7-8	Cedartown.
	27. G. P.	20,646	.....	April 2	Griffin.
	27. G. P.	20,520	40,000	April 2	"
	27. G. P.	21,225	47,000	Mar. 28-April 4	"
	27. G. P.	20,776	49,000	April 10-20	"
	27. C. of G.	13,102	45,000	Mar. 7-9	Cedartown.
	29. S. I. C. L.	2,019	50,600	Mar. 16	Savannah.
	29. A. S. C. & L. L.	756	50,800	Mar. 16	"
	29. S. & W.	863	50,900	Mar. 5	"
	29. S. & W.	5,185	50,000	Mar. 5	"
	29. G. P.	20,392	40,500	Mar. 5	"
225	29. C. of G.	13,275	51,900	Mar. 7	"
	29. R. & D.	14,595	40,900	Mar. 7	"
	29. R. & D.	14,573	40,400	Mar. 7	"
	29. R. & D.	15,342	41,100	Mar. 7	"
	29. S. & W.	5,110	51,000	Mar. 7	"
	29. S. & W.	5,165	50,700	Mar. 14	"
	29. G. P.	21,572	50,400	Mar. 7	"
	29. G. P.	21,588	50,800	Mar. 7	"
	29. G. P.	20,322	41,200	Mar. 14	"
	29. G. P.	20,310	40,000	Mar. 14	"
	29. G. P.	20,862	50,500	Mar. 8	"
	29. G. P.	20,800	50,000	Mar. 14	"
	29. G. P.	20,918	51,200	Mar. 12	Sebastopol.
	29. G. P.	20,989	50,500	Mar. 10	Savannah.
	29. G. P.	21,200	50,300	Mar. 21	"
	29. G. P.	21,054	50,000	Mar. 10	"
	29. G. P.	20,903	50,700	Mar. 10	"
	29. G. P.	20,704	50,400	Mar. 10	"
	29. G. P.	21,444	50,300	Mar. 10	"
	29. C. of G.	13,114	51,600	Mar. 10	"

Shipment.	Initial.	Number.	Weight.	Date unloaded.	Place unloaded.
1892.					
Feb.	29. G. P.	20,947	42,400	Mar. 21	Chattanooga.
	29. G. P.	20,878	47,600	Mar. 27	"
226	29. G. P.	25,556	40,000	Mar. 22	"
	29. G. P.	20,711	47,000	Mar. 27	"
	29. G. P.	21,500	51,000	Mar. 18	"
	29. G. P.	20,467	40,600	April 3	Griffin.
	29. G. P.	20,434	42,000	April 1-April 5	"
March	1. S. & W.	5,032	50,800	Mar. 7	Atlanta.
	1. S. & W.	20,536	49,000	Mar. 12	"
	1. G. P.	20,495	40,700	Mar. 5	"
	1. G. P.	20,605	41,700	Mar. 8	"
	1. E. & W. of A.	3,028	46,800	Mar. 12	"
	1. G. P.	20,417	40,800	Mar. 7	Savannah.
	1. S. & W.	16,006	50,500	Mar. 7	"
	2. A. S. C. & L. L.	851	43,400	Mar. 15	Atlanta.
	3. G. P.	21,544	50,000	Mar. 14	Savannah.
	3. V. & A.	716	50,600	Mar. 14	"
	3. C. of G.	13,278	51,200	Mar. 10	"
	3. R. & D.	14,340	40,400	Mar. 14	"
	3. R. & D.	14,533	40,800	Mar. 12	"
	3. G. P.	20,490	50,000	Mar. 9	Atlanta.
	3. G. P.	21,538	50,700	Mar. 16	"
	3. G. P.	20,993	50,600	Mar. 11	"
	3. R. & D.	15,362	44,300	Mar. 15	"
	3. R. & D.	15,348	40,200	Mar. 14	Savannah.

13,210,500

227 Endorsement: Central Railroad and Banking Company in account with Virginia and Alabama Coal Company. Coal unloaded after March 4th, 1892, 13,210,500 pounds + 505,000 pounds = 13,715,500. Report No. 2 of C. H. Schooler and W. B. Starke. Filed February 22, 1893. L. M. Erwin, deputy clerk.

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BIRMINGHAM, ALA., November 26, 1892.

Whereas, the undersigned coal companies supplied coal to the Central Railroad and Banking Company of Georgia while operated by the Richmond and Danville Railroad Company (the undersigned constituting all of the coal companies by which coal was supplied);

And whereas, we claim a part of the coal so furnished by us was on the bins of the Central railroad on March 4th, 1892, when a receiver of said railroad was appointed;

And whereas, we further claim that the receiver is liable to us for all the coal furnished the Central railroad, and certainly, beyond any possible question, for the coal went into his possession on March 4th, 1892, and which was used by him as receiver, and that our claim is entitled to rank as a claim for operating expenses with as much justice as a claim for labor, cross-ties, &c., which has already been ordered to be paid by the court;

And whereas, experts have ascertained the total amount of such coal on the bins on March 4th, 1892;

Now, therefore, the undersigned do agree, each with the other, that each will claim and demand of and against said receiver such amount of said total of coal on bins (or the value thereof), as is in proportion to their respective total debts, which debts are as follows:

No. 1, Virginia and Alabama Coal Company.....	\$26,607 00
Per J. R. Ryan, G. M.	
No. 2, Sloss Iron and Steel Company.....	14,359 58
By Thomas Seddon, pres.	
No. 3, Corona Coal and Coke Company.....	5,410 77
Per L. B. Musgrave, G. M.	
Little Warrior Coal Company... ..	3,166 86
By Claud Estes.	

STATE OF ALABAMA, {
Jefferson County. }

Personally appeared before me, F. M. Frazier, a notary public in
 and for said county and State, G. B. McCormick, assistant
 229 general manager of the Tennessee Coal, Iron and Railroad
 Company, who, being duly sworn, deposeth and saith as fol-
 lows :

That he has been assistant general manager of the Tennessee Coal,
 Iron and Railroad Company for one year previous to the time the
 road went into the hands of a receiver, on March 4th, 1892; that the
 company represented by him has no claim whatever upon any coal
 that was in the bins of the Central Railroad Company at the time of
 the appointment of said receiver, and expressly wishes to make affi-
 davit to above facts.

G. B. McCORMICK.

Subscribed and sworn to before me this 24th day of May, 1892.

F. M. FRAZIER,
Notary Public.

In the Fifth United States Circuit Court, Western Division, Southern
 District of Georgia.

MRS. ROWENA M. CLARKE	} In Equity. In the United States Circuit Court, East- ern Division, Southern Dis- trict of Georgia.
<i>vs.</i>	
THE CENTRAL RAILROAD AND BANK- ING COMPANY OF GEORGIA <i>et al.</i>	

Intervention of the Virginia and Alabama Coal Company.

Hearing of evidence conducted before special master, May 25th,
 1893.

Appearances as before stated.

C. H. SCHOOLER, being sworn for intervenor, testified in substance
 as follows :

"I made a thorough examination of the books in the hands of the
 receiver of the Central Railroad and Banking Company of Georgia,
 showing receipts of coal, and found upon those books the names of
 five (5) coal companies, to wit, the Virginia and Alabama Coal
 Company, the Sloss Iron and Steel Company, Corona Coal and Coke

Company, Little Warrior Coal Company, and the Tennessee Coal, Iron and Railroad Company. There were the only companies
 230 with which it appears the Central Railroad and Banking Company of Georgia or the Richmond and Danville Railroad Company, while operating the same, dealt with in the purchase of coal."

Evidence Introduced on the Part of the Central Railroad and Banking Company of Georgia and its Receivers.

Affidavit of S. R. Shirm as to coal used at Augusta, Ga.

Central Railroad and Banking Company of Georgia, South Carolina division.

OFFICE OF SUPERINTENDENT,
 AUGUSTA, GA., April 11th, 1893.

Mr. Marion Erwin, att'y, Macon, Ga.

DEAR SIR: As per yours of March 16th, I enclose you affidavit properly signed. This matter was delayed by my not being able to locate records for rechecking. I trust this will be satisfactory.

Yours truly,

W. A. MOORE,
Superintendent.

UNITED STATES OF AMERICA, }
 Northeastern Division, Southern District of Georgia. }

The undersigned, being duly sworn, deposes and says:

That he occupies the position of chief clerk to superintendent under H. M. Comer, receiver of the Central Railroad and Banking Company of Georgia, at Augusta; that the records kept by the Richmond and Danville Railroad Company at Augusta, during the time it was operating the Central Railroad of Georgia, which
 231 records are now in the custody of the Augusta agency of said receiver, show that the engines used on the Port Royal and Augusta railroad, Port Royal and Western Carolina, and the Charlotte, Columbia and Augusta railroad were regularly coaled at the coal chutes of the Central Railroad of Georgia, at Augusta, and show that the amount of coal used by the said railroads from said bins were respectively as shown below:

	P. R. & A.	P. R. & W. C.	C. C. & A.
October, 1891.....	245	1,009	388
November	304	1,118	451
December	147	1,235	372
January, 1892	146	986	303
February	508	1,007	258
March.....	168	755	352
Total No. tons.....	1,518	6,110	2,124

A comparison of the numbers of the cars on the list hereto attached with the cars shipped to the Augusta agency of the Central Railroad of Georgia by the Virginia and Alabama Coal Company, as appears by the said records in the hands of said receiver, shows that all said cars which are marked with a pencil check beside the same on the attached list were received at Augusta, and those having a cross-mark opposite the numbers have no record at the Augusta agency, and cars on said list which were afterwards transferred to other railroads, as shown by the records aforesaid, are marked on the attached list with the name of the road to which the same was transferred, besides the numbers of the cars, as "P. R. & W. C. R'y," "P. R. & A. R'y."

S. R. SHIRM.

Sworn to and subscribed before me this 11th day of April, 1893.

ALEXANDER R. WASTON,

Ordinary R. C., Georgia.

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Memorandum by the Clerk.

In copying the list attached to the foregoing affidavit of S. R. Shirm, I have found it convenient to retain the cross-marks placed opposite the number of the particular cars on the list by Mr. Shirm, as indicating those cars which have no record at the Augusta office; as all the other cars on the list had the pencil check, the latter is sufficiently indicated by the absence of the cross-mark.

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Shipments of Coal from Day's Gap, Alabama.

1891.		Cars.	Weight.	Consignee.	Destination.
Dec. 21.	S. & W.	16,058	51,000	B. C. Epperson.	Augusta, Ga.
21.	W. N. C.	148	42,000		
21.	C. of G.	13,268	50,200		
22.	G. P.	21,222	50,700		
22.	S. & W.	5,222	52,600	Used at Columbus, Jan. 6, '91.	
28.	V. & A.	715	57,000	P. R. & W. C.	
28.	C. of G.	13,113	50,600		
28.	S. & W.	5,235	50,200	P. R. & W. C.	
28.	G. P.	20,868	50,300		
28.	G. P.	20,549	40,000		
29.	N. G. P. O.	44,360	50,600	P. R. & W. C.	
29.	C. G. C.	1,017	40,000		
30.	S. & W.	5,102	52,000		
30.	R. of G.	431	50,000		
30.	C. of G.	13,212	50,000		
30.	V. & A.	773	50,600		
30.	G. P.	21,492	50,301		
30.	G. P.	20,942	50,700		
234 31.	S. & W.	20,504	50,000		
31.	S. G. C. S.	55,610	47,000		
31.	C. of G.	13,259	57,900		
31.	C. of G.	13,150	50,000		
31.	C. of G.	13,004	50,900		
Dec. 23.	G. P.	21,602	60,000	P. R. & W. C.	
23.	G. P.	21,402	60,000	"	
23.	G. P.	18,183	60,000		
23.	G. P.	21,268	60,000		
23.	G. P.	13,204	60,000		

	1891.	Cars.	Weight.	Consignee.	Destination.
Jan.	2. G. P.	21,578	40,000		
	2. C. of G.	13,230	48,000		
	2. C. of G.	12,013	41,500	No record of unloading point.	
	2. G. P.	20,469	40,700		
	2. C. of G.	13,270	50,500		
	2. C. of G.	12,003	41,000		
	4. C. of G.	13,098	50,700		
	4. C. of G.	13,211	50,000		
	4. C. of G.	13,057	50,000	P. R. & W. C.	
	4. G. P.	18,677	50,000		
	4. R. & D.	15,321 X	40,400	No record.	
235	4. R. & D.	15,284	40,700	P. R. & W. C. R'y.	
	6. G. P.	21,113	50,400	P. R. & W. C. R'y.	
	6. G. P.	20,291	40,900	P. R. & W. C. R'y.	
	6. G. P.	20,815	50,500		
	6. G. P.	20,090	50,500	P. R. & A. R'y.	
	6. G. P.	20,973	50,800	P. R. & W. C. R'y.	
	6. G. P.	21,182	50,000		
	6. G. P.	21,158	50,800		
	6. G. P.	21,046	50,700		
	6. C. of G.	13,090	50,800		
	6. C. of G.	13,273	51,300	P. R. & A.	
Jan.	7. G. P.	20,989	50,900	B. C. Epperson.....Augusta, Ga.	
	7. G. P.	21,104	50,600		
	7. G. P.	18,682	51,600		
	7. G. P.	18,423	50,600		
	7. G. P.	18,493	50,000		
	8. C. of G.	13,079	50,100		
	8. C. of G.	13,191	50,500		
	8. C. of G.	12,072	40,400		
	8. G. P.	21,016	50,800		
	8. C. & W.	5,012	50,700		
236	8. S. & W.	16,032	50,000		
	9. R. & D.	14,552	40,800		
	9. R. & D.	54,409	50,600	P. R. & W. C. R'y.	
	9. S. & W.	5,182	50,400	No record of unloading point.	
	9. W. R.	23,089	50,300		
	9. S. & W.	20,532	50,100		
	9. W. N. C.	130	40,800		
	9. Am. R'y.	2,009	40,800		
	9. V. & A.	755	50,000		
	15. E. & W. of Ala.	3,088	40,000		
	15. S. & W.	20,506	50,000		
	15. G. P.	20,744	52,000		
	15. G. P.	20,800	50,800		
	15. G. P.	20,853	51,000	P. R. & A. R'y.	
	15. G. P.	13,169	50,000		
	15. G. P.	22,480	50,700	P. R. & W. C. R'y.	
	19. G. P.	21,041	51,100		
	19. G. P.	21,134	50,100	P. R. & W. C. R'y.	
	19. G. P.	21,126	50,800		
	19. G. P.	18,345	50,000	P. R. & W. C. R'y.	
	19. S. I. C. L.	70,063	50,000		
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	1892.				
Jan.	19. W. N. C.	146	40,900		
	19. V. & A.	710	51,000		
	20. G. P.	21,526 X	51,401	Record shows No. 21,520-51,400.	
	20. G. P.	21,404	50,900		
	20. G. P.	20,723	51,000		
Jan.	21. R. & D.	15,262	40,700		
	21. S. & W.	16,016	50,000		
	21. S. & W.	16,099	50,700		
	21. G. P.	18,405	50,700		

1892.	Cars.	Weight.	Consignee.	Destination.
Jan. 21. V. & A.....	796	50,000		
21. R. of G.....	433	48,800		
22. C. of G.....	13,067	50,400	P. R. & W. C. R'y.	
22. C. of G.....	13,242	50,000		
22. G. P.....	20,777	50,100		
22. C. & W.....	5,016	50,800		
23. G. P.....	20,364	40,800		
23. G. P.....	21,619	50,000		
23. G. P.....	20,394	40,300		
23. G. P.....	13,249	50,800		
23. S. & W.....	20,524	48,000		
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Feb. 16. E. & T. H....	3,390	48,200	B. C. Epperson, Augusta.	
16. R. & D.....	15,312	40,300	P. R. & W. C. R'y.	
16. C. of G.....	13,222	50,500	P. R. & W. C. R'y.	
16. G. P.....	20,603	40,800	P. R. & W. C. R'y.	
16. G. P.....	21,572	50,800		
16. G. P.....	20,897 X	50,600	No record.	
16. V. & A.....	737	51,000		
From Coal Valley :				
Feb. 17. R. & D.....	14,566	40,300	B. C. Epperson, Augusta.	
17. R. & D.....	14,581	40,200	P. R. & W. C. R'y.	
17. R. & D.....	15,383	40,000	P. R. & W. C. R'y.	
17. R. & D.....	14,070 X	41,000	No record received 14,073	
17. R. & D.....	20,403	40,500	P. R. and W. C. R'y.	
Day's Gap :				
Feb. 18. G. P.....	21,415	50,000	Record.	
19. G. P.....	21,133	50,300	Record shows 20,977.	
19. G. P.....	20,979	50,800	P. R. and W. C. R'y.	
19. G. P.....	21,202	50,000		
19. G. P.....	20,879	51,000	P. R. and W. C.	
19. S. and W.....	50,009	50,800	No. 5,009 or 5,007.	
19. R. and D.....	15,271	40,900	P. R. and A. R'y.	
239 20. S. and W.....	15,296	40,900	P. R. and W. C. R'y.	
20. S. and W.....	16,003	50,500		
20. S. and W.....	5,297	50,800		
20. C. of G.....	13,046	51,000	P. R. and A. R'y.	
20. V. and A.....	13,094	51,600		
20. V. and A.....	753	50,000		
20. S. I. C. L.....	5,072	50,300		
20. W. of A.....	1,901	50,000		
20. G. P.....	20,234	43,400		
20. G. P.....	20,858	45,000		
20. G. P.....	21,027	47,700		
20. G. P.....	20,926	47,300	P. R. and W. C.	
20. G. P.....	20,725	49,500		
20. G. P.....	20,534	40,000		
20. G. P.....	21,285	48,000	P. R. and W. C.	
20. S. & W.....	16,022	42,000		
20. G. P.....	21,126	51,700		
20. G. P.....	21,430	50,600		
20. G. P.....	21,559	50,801		
20. G. P.....	20,581	41,000		
20. G. P.....	20,944	50,500	P. R. & W. C.	
240 20. G. P.....	20,941	50,400		
20. G. P.....	21,441	50,800		
20. S. & W.....	16,076	50,700		
20. S. & W.....	16,056	50,600		
20. S. & W.....	5,154	50,000		
20. C. of G.....	12,008	41,600	P. R. & W. C.	
25. G. P.....	18,546	50,000		

	1892.	Cars.	Weight.	Consignee.	Destination.
Feb.	25. G. P.	18,146	50,300		
	25. G. P.	18,369	50,000		
	25. G. P.	18,047	51,000	Transfd to R. & D., 15,338, and rec'd Mar. 9, '92.	
	25. G. P.	20,474 X	40,800		
	25. W. N. G.	126	40,300	P. R. & W. C.	
Feb.	29. S. & W.	5,013	45,000	B. C. Epperson	Augusta.
	29. W. & A.	20,530	41,200	P. R. & A. R'y.	
	29. W. of A.	1,946	40,000	P. R. & A. R'y.	
	29. R. & D.	15,385	43,800		
	29. S. & W.	5,038	41,600		
	29. C. of G.	13,073	45,300		
	'91.				
Oct.	21. G. P.	18,025	50,000		
	21. G. P.	18,430	50,900		
	21. G. P.	18,586	51,000		
241	21. G. P.	18,386 X	52,000	No record.	
	21. G. P.	18,576 X	50,800	"	
Oct.	23. G. P.	18,455	50,700	"	
	23. G. P.	18,105 X	50,600	"	
	23. G. P.	18,596	50,300		
	23. G. P.	18,564	50,500		
	23. G. P.	18,058	51,000		
	23. G. P.	18,507	50,000		
	23. G. P.	18,181	50,700		
	30. G. P.	20,718	50,800		
	30. R. & D.	15,217	41,200		
	30. R. & D.	12,073 X	40,700	No record.	
	30. S. & W.	5,194	50,500	No record of where unloaded.	
	30. S. & W.	5,116	50,000		
	30. S. & W.	5,021	50,000	P. R. & W. C. R'y.	
	30. S. & W.	18,313	50,000		
	30. G. P.	21,236	50,800	B. C. Epperson	Augusta.
	30. G. P.	20,507	40,500		
	30. G. P.	20,545	40,800		
	30. G. P.	20,782	50,000		
	30. G. P.	20,928	51,700		
242	30. G. P.	21,186	50,600		
	30. R. & D.	15,309 X	40,800	No record.	
	30. S. & W.	20,350	48,600	Record shows 20,530.	
	30. P. R. R.	70,964	42,000		
Nov.	10. G. P.	20,812	50,700		
	10. G. P.	21,112	50,700		
	10. G. P.	21,108	50,900	No record.	
	10. G. P.	20,781 X	51,000		
	10. G. P.	21,567	51,400		

Endorsement: Intervention of Virginia and Alabama Coal Company and Sloss Iron and Steel Company. Coal report. Affidavit of S. A. Shirm as to coal used at Augusta. Filed July 18, 1893. L. M. Erwin, deputy clerk.

243 GEORGIA, {
 Chatham County. }

Personally appears R. L. Shaw, who, being duly sworn, deposes and says that he is and has been since the year 1891 foreman of the Kellyton coal chute on the Savannah and Western railroad; that he is thoroughly familiar with the size and capacity of said coal chute and knows that the same will not hold more than 4,500

tons of steam coal; deponent further says that on the 4th day of March, 1892, there were 2,673 tons of coal in the said coal chute.

Deponent further says that he has been continuously in charge of said coal chute since September, 1891, and that during said period, so far as he knows, no parties have been to said chute for the purpose of checking up the amount of coal on hand there on March 4th, 1892, and he knows that no such parties have had possession of the records or have called upon him for them for the purpose of checking up the amount of coal on hand at the time mentioned.

R. L. SHAW.

Sworn to and subscribed before me this April 11th, 1893.

H. W. JOHNSON,

Not. Pub., C. C. Ga.

In the Circuit Court of the United States for the Southern District of Georgia.

ROWENA M. CLARKE *et al.*

vs.

THE CENTRAL RAILROAD AND BANKING COMPANY OF
GEORGIA *et al.*

In Equity.

THE CENTRAL RAILROAD AND BANKING COMPANY OF
GEORGIA

vs.

THE FARMERS' LOAN AND TRUST COMPANY *et al.*

Before the undersigned personally comes E. P. Alexander, who, being duly sworn, deposes and says that he has been continuously a director of the Central Railroad and Banking Company of Georgia, during the years 1891 and 1892, to the 28th day of March, 1892; that he knows of his personal knowledge that in June 1891, under the lease dated June 1st, 1891, of the railroads, premises, property and appurtenances of the Central Railroad and Banking

Company of Georgia, to the Georgia Pacific Railway Com-
244 pany, a copy of which lease is hereto attached, the Richmond and Danville Railroad Company went into the possession of and assumed the control and management of all of said railroad lines, property and appurtenances of said Central Railroad and Banking Company of Georgia, except its banking business, which said lease did not purport to convey to said Georgia Pacific Railway Company by the terms of said lease, and that thereupon the Cent. R. R. & Banking Co. of Ga., ceased to operate its railroad lines and discharged all of its employees theretofore employed in the operation of said lines of railroad and in the shops of said company and said Central Railroad and Banking Company thereafter confined itself exclusively to its banking business in the city of Savannah, and had no other employees except its president and board of directors and attorneys and such employees as were necessary for its banking business, and such only as were necessary to maintain the organization of a railroad company which had parted by lease

with its railroad lines and shops or the maintaining of the same, and that no change was made in this particular until after the action of the court in the above-stated case appointing a temporary receiver for the properties of the Central Railroad and Banking Company of Georgia, March 4th, 1892. That notice was given to all the persons employed by the Central Railroad and Banking Company of Georgia, in the operation of said railroads of the fact of said lease, and that the Richmond and Danville Railroad Company had assumed the operation of said railroad lines under said lease, and that the Richmond and Danville Railroad Company did in fact, in June, 1891, assume the operation and management of said railroad lines, and that the fact of such operation was well known and notorious during the time of such operation and until March 4th, 1892.

That upon the assumption of the operation of said railroad lines and shops by the said Richmond and Danville Railroad Company, all of the employees of the Central Railroad and Banking Company of Georgia, engaged in the same, entered into the service of the said Richmond and Danville Railroad Company, except such as voluntarily gave up their positions or were discharged from the positions formerly held under the Central Railroad and Banking Company of Georgia, by the officers of the said Richmond and Danville Railroad Company. The Central Railroad and Banking Company of Georgia thereupon ceased to pay said former employees for any service rendered in the operation of such railroads and shops and did not authorize such former employees as entered into

the employment of the Richmond and Danville Railroad
215 Company to make any contracts for the operation of said Central railroad lines and shops and its appurtenances in behalf of the Central Railroad and Banking Company of Georgia. Deponent further says that on June 1st, 1891, as president of the Central Railroad and Banking Company of Georgia, he issued a circular to the heads of the various departments of that company, notifying them of the lease of the said company to the Georgia Pacific Railway Company, and said notice was transmitted to said officers, and directed the officers and employees concerned in the operation of its railroad and steamship lines to report thereafter and receive all orders and instructions from the Georgia Pacific Railway Company; that Joseph P. Minetree had no connection whatever in any capacity with said Central Railroad and Banking Company of Georgia prior to June 1st, 1891, but he was the purchasing agent of the Richmond and Danville Railroad Company, and his jurisdiction was extended over the railroad lines of the Central railroad by the order of W. H. Green, general manager of the Richmond and Danville Railroad Company, dated June 1st, 1891.

E. P. ALEXANDER.

Sworn to and subscribed before me this 17th day of December, 1892.

B. A. MUNNERLYN,
Notary Public.

To Gen. E. P. Alexander, the above affiant:

First. Is it not true that you did not instruct the employees of the Central Railroad and Banking Company of Georgia, in Macon, to notify those persons with whom they had dealt, while representing the Central Railroad and Banking Company of Georgia, as agent, servant, master mechanic, foreman of blacksmith shop, or in any other capacity of this character, that there was any change in the affairs of the company?

Second. In this particular case the Macon foundry and machine works, at Macon, had been doing a great deal of repairing for the Central Railroad and Banking Company of Georgia prior to the first day of July, 1891, for almost a year. After the first day of July, 1891, they continued to do the same work, keeping the charges on their books against the Central Railroad and Banking Company of Georgia. Did you or anybody in the employ of the Central Railroad and Banking Company of Georgia, in any representative capacity, notify the Macon foundry and machine works that the relation of the Central Railroad and Banking Company of Georgia to the work they were doing was changed at all?

246 Third. To whom did the Central Railroad and Banking Company of Georgia surrender the portion of the road which you referred to in the foregoing affidavit? What is the name of the person? Where was he when it was done? What writings passed between the authorities of the Central Railroad and Banking Company of Georgia and the Richmond and Danville Railroad Company consummating the change of operation from the Central Railroad and Banking Company to the Richmond and Danville Railroad Company?

You use the expression in the foregoing affidavit that the Richmond and Danville Railroad Company assumed the control and management of certain property and appurtenances of the Central Railroad and Banking Company of Georgia. How was this done? Give, if you please, the *modus operandi* of this, and the exact manner in which it was done. Did you not remain president of the Central Railroad and Banking Company of Georgia? Do you mean to say that the Richmond and Danville Railroad Company occupied a portion of the office of the Central Railroad and Banking Company of Georgia and took in the money that came in from freight and passenger traffic, and paid money to the employees by the consent of the Central Railroad and Banking Company of Georgia? Is there anything in the minutes of the board of directors of the Central Railroad and Banking Company of Georgia showing corporate action in this matter permitting the Richmond and Danville Railroad Company to take possession and assume control of the Central Railroad and Banking Company of Georgia? If so, attach a copy of it to your answers to these questions.

To the first cross-interrogatory I reply:

It is true that the officers and employees of the Central Railroad and Banking Company of Georgia were not specifically instructed to notify the persons with whom they dealt that the railroad was in

future to be operated by the Georgia Pacific as lessee, the reasons for this apparent neglect being that the matter was already as notorious and as much talked of as a war would have been, and, moreover, because the burden of finding out with whom he is dealing is upon every prudent business man in every transaction.

To the second cross-interrogatory I reply :

I can only answer for myself. I did not notify the Macon foundry and machine works personally for the reasons given above, but I did give to the press for general publication all the facts and the orders to officers and employees.

To the third cross-interrogatory I reply :

247 The Central Railroad and Banking Company of Georgia surrendered—not any separate portion, but the whole of its railroad and steamship properties, to the corporation which became the lessee, to wit, to the Georgia Pacific Railroad Company, and not to any individual. The lessee company designated a number of different persons to take charge of different departments in the operation of the leased property. I do not remember the name of all, but Mr. Sol. Haas was put in charge of the rate-making, Mr. Minetree of the purchasing, Mr. Ansley of the accounting, Mr. Hall of receiving money and paying it out, and Mr. W. H. Green of physical maintenance and operation.

I recall no "writings" passing between the Central Railroad and Banking Company of Georgia and the Richmond and Danville Railroad Company on the occasion of the lease, but a duly executed instrument of lease passed between the Central and the Georgia Pacific Railroad Company, which preceded and brought about the change of operation referred to. It was brought about by the Georgia Pacific Railroad Company becoming the lessee of the Central Railroad and Banking Company's transportation lines, then by agreement with the Richmond and Danville Railroad Company, getting the latter company to operate the property; and the latter company did this by sending down their own chief officials, who took more or less direct charge of different departments of the operation, removing and appointing employees in their discretion.

Yes; I remained president of the Central Railroad and Banking Company of Georgia, but I ceased entirely to have anything to do with the operation or maintenance of the railroad lines. I do mean to say that the Richmond and Danville Railroad Company, as the agent of the lessee (the Georgia Pacific Railroad Company), did occupy all the former offices of the Central Railroad and Banking Company except its banking office in the city of Savannah (its banking house and business not being leased), and did collect every dollar of freight and passenger and mail and express earnings, and did pay its employees and its expenses of all kinds, all by the consent of the Central Railroad and Banking Company of Georgia.

There is in the minutes of the board of directors of the latter corporation a full exhibit of the lease and of all the corporate
248 action taken in the premises, but I have no means at present of procuring a copy.

E. P. ALEXANDER.

Sworn to and subscribed before me this 17th day of December 1892.

B. A. MUNNERLYN,
Notary Public.

In Circuit Court of United States, Southern District of Georgia,
Eastern Division.

ROWENA M. CLARKE	}	In Equity. Intervening Petition of Sloss Iron and Steel Company.
<i>vs.</i>		
THE CENTRAL RAILROAD AND BANKING COMPANY <i>et al.</i>		

To the honorable judges of said court:

The Sloss Iron and Steel Company, a corporation under the laws of the State of Alabama, brings this intervening petition in said case against the defendants in said case, The Central Railroad and Banking Company, the Richmond and Danville Railroad Company, and against H. M. Comer, receiver of the said Central Railroad and Banking Company. Petitioner hereby adopts all the allegations of the bill of complainant, so far as pertinent to this intervention; and especially the allegations in reference to the operation of the Central Railroad and Banking Company, under lease or color of lease by the Richmond and Danville Railroad Company.

During the period in which said Richmond and Danville Railroad Company operated said Central Railroad and Banking Company as aforesaid, petitioner sold to the said Richmond and Danville railroad to be used and consumed in operating the said Central Railroad and Banking Company of Georgia, coal and coke to the amount, exclusive of interest, of fourteen thousand three hundred and fifty-nine dollars and 38 cents (\$14,359.38), of which an itemized account is hereto attached and made part hereof. Said coal was to be delivered to the superintendents of the divisions of said Central Railroad and Banking Company of Georgia, upon orders from them and was so delivered; and was actually used and consumed in the operation of said Central Railroad and Banking Company. The annexed account which shows all the particulars of the debt now sued on, the numbers of the cars, weights and price of the coal, was made out on the books of intervenor against the said Central Railroad and Banking Company of Georgia, for the reason that the same was bought for the said Central by the Richmond and Danville Railroad Company. The accounts for said coal have been audited and admitted by the officers and agents of defendants as shown by copy letter attached. Intervenor avers that the said Richmond and Danville Railroad Company and the said Central Railroad and Banking Company are jointly and severally liable to intervenor for the coal so bought and so used. The former is liable because it purchased the coal from this intervenor, and the latter is liable because the coal was purchased for its use and actually used by it in the necessary operation of said road, and in the exercise of the obligations

and duties to the public imposed upon it by its charter and by the law.

Intervenor further shows that a considerable part of the coal described in said account, and especially of that delivered during the latter portion of the time covered by said account, was on hand when this court appointed a receiver of the said Central Railroad and Banking Company on March 4th, 1892, and went into the possession of and had been used by the said receiver in the running of said railroad. Intervenor submit- that H. M. Comer, the receiver of said railroad, is liable as such receiver to intervenor for the value of the coal so used, which value at Savannah, Macon, Atlanta, Columbus, Augusta and other points where it went into the receiver's possession as aforesaid on March 4th, 1892, was about two dollars and fifty cents per ton, and that intervenor's claim for said coal so used by the receiver is a claim for operating expenses of the receivership, and is a first lien upon the property of said Central Railroad and Banking Company.

Intervenor is not now able to state precisely the amount of the coal for which the said receiver is liable, but he asks leave to make proof of the same at the hearing before the master; and that the defendants hereto be required to produce at said hearing all the books and documents of every description which will show such amount.

Intervenor prays a decree (expressly waiving discovery from the defendants) against the Richmond and Danville Railroad Company and against the Central Railroad and Banking Company for said principal sum of \$14,359.38, jointly and severally, and against H. M. Comer, as receiver, for the value of the coal which went into the possession of the receivers of the Central Railroad and Banking Company of Georgia on March 4th, 1892; and the amount of which intervenor will establish on the hearing of this intervention.

HILL, HARRIS & BIRCH,
Solicitors for Intervenor.

STATE OF GEORGIA,)
Southern District, Bibb County. }

Before me comes W. B. Birch, agent and attorney for the intervenor, The Sloss, Iron and Steel Company, who on oath says that the allegations in the foregoing intervention are true to the best of his knowledge and belief.

W. B. BIRCH.

Sworn to and subscribed before me, this November 29th, 1892.

F. R. MARTIN,
U. S. Commissioner.

Statement of Account Central Railroad and Banking Company of Georgia with Sloss Iron and Steel Company.

JUNE 6, 1892.

		Coal.	Coke.
1890.			
Sept. 30.	To coke in car: Ga. Pac. 16097, wt. 45,000.....		
1891.			
Jan. 23.	" " 16119, wt. 49,300..... Shipped H. C. Roberts, S. K., Macon, Ga..... 47.15 tons at \$2.75. B'ham v'ch'd in our favor July 25, 1891, now in hands Jno. W. Hall, treas. See his letter April 25, 1892.		\$129 65
Aug. 31.	To statement No. 1 attached..... See D. D. Curran's letter, June 7, '92.	\$2,487 49	
" 6.	To 2 cars coke, G. P. 16248, 16231. Wts. 49,900, 48,600. Shipped H. C. Roberts, S. R., Macon, Ga., 46.65 tons, at \$2.75..... See D. D. Curran's letter, May 5, 1892, saying voucher sent to Savannah May 22, 1892.		128 29
251	See Geo. Dole Wadley's letter June 3, 1892, v'ch'r sent W. H. Green, G. M., R. & D.		
1892.			
Jan. 31.	To statement No. 2..... Voucher made in our favor by B. C. Epperson, sup't; same in hands Treas. John W. Hall. See his letter March 31, 1892.....	1,080 37 3,567 86	207 94
	Amount forward.....		\$3,825 80

Statement of Account Central Railroad and Banking Company of Georgia with Sloss Iron and Steel Company.

JUNE 6, 1892.

		Coal.	Coke.
1892.	Brought forward.....		\$3,825 80
Jan. 30.	To statement No. 3: V'ch'd February 29, 1892, by Sup't B. C. Epper- son; same in hands John W. Hall, treas. See his letter Feb. 31, 1892.....	8773 97	
" 30.	To statement No. 4: V'ch'd Feb. 29, 1892, by Sup't Curran; see his letter April 3, 1892; v'ch'r in hands of John W. Hall; his letter March 3, 1892.....	4,763 54	
" 30.	To statement No. 5: V'ch'd Jan. 31, 1892, by Sup't D. D. Curran; same in hands of John W. Hall. See his let- ter March 31, 1892.....	2,953 74	
" 30.	To statement No. 6: V'ch'd March 3, 1892, by Sup't B. C. Epperson. See letters of Edw'd L. McIntyre, May 17, 1892.....	79 80	
252			
Feb. 25.	To statement No. 7: V'ch'd March 30, 1892, by Sup't H. R. Dill. See his letter April 11, 1892; also of Edw'd M. McIntyre May 17, 1892.....	1,932 40	
	Amount forward.....		10,502 45
			14,328 25

Statement of Account Central Railroad and Banking Company of Georgia with Sloss Iron and Steel Company.

JUNE 6, 1892.

	Coal.	Coke.
1891. Brought forward.....		
July 31. To car coal, G. P. 18278, shipped from Coalburg, May 9, 1891, to S. L. & S. Co., B'ham, and delivered through error to C. & W. Div. C. R. R. Co.; auth'y G. S. Barnnar, G. Ea. G. P. R. R. Wt. 37,250, No. 28,625, — tons at \$1.08 $\frac{1}{2}$, B'ham	\$14,328 25	
	\$31 13	31 13
		\$14,359 38

To this amount interest is to be added at legal rate from 15th month.

THE STATE OF ALABAMA,)
County of Jefferson.)

Before me, the undersigned, Ben. J. Leonard, notary public, personally appeared J. W. McQueen, auditor of the Sloss Iron and Steel Company, a competent witness, who, being duly sworn, says that the foregoing account for \$14,359.38 against the Central Railroad and Banking Company of Georgia is, within the knowledge of the affiant, just, true, and correct; that the amount thereof is due and unpaid, and that all just and lawful offsets, payments and credits have been allowed.

J. W. McQUEEN, Auditor.

Sworn to and subscribed before me the first day of November, 1892.

BEN. J. LEONARD,
Notary Public.

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ATLANTA, GA., April 25th, 1892.

Mr. W. L. Sims, secretary and treasurer Sloss Iron and Steel Company, Birmingham, Ala.

DEAR SIR: Yours of the 23d inst., in reference to Central Railroad and Banking Company of Georgia voucher for \$129.65, is received. We still hold that voucher in our office.

Yours truly,

(Signed)

JOHN W. HALL, Treas.

I certify the above to be a correct copy of the original letter.

C. H. SCHOOLER.

MACON, GA., June 7th, 1892.

Mr. J. W. McQueen, Birmingham, Ala.

DEAR SIR: Replying to your favor of May 28th, relative to voucher being made for coal bills, covering coal shipped to this division, I beg to advise that voucher was made leaving here on May 22d, for \$2,487.49, which covers all invoice received from you, and also the Richmond and Danville, 15214.

This voucher covers following invoices: December 31st, coal shipped, \$2,935.31 and \$740.72. Invoice of May 2d, Richmond and Danville, 15214, \$18.62; invoice of August 31st, covering shipments of August, \$21.29 and \$1,689.15; also invoice of March 31st, for Georgia Pacific, 20763, amounting — \$39.00. This covers our entire indebtedness to you with the exception, of course, of the coal which you have shipped during the month of June.

Yours truly,

D. D. CURRAN, *Sup't.*

I certify the above to be a correct copy of the original letter.

B. J. LEONARD.

MACON, GA., *May 31st, 1892.*

J. W. McQueen, Esq., Birmingham, Ala.

DEAR SIR: Replying to your letter of the 28th, about bill of \$128.29, account of two cars of coke shipped this division in August, 1891, I beg to advise that voucher was forwarded from here to Savannah covering this on May 22d last. I presume this will reach you in due time.

Yours truly,

(Signed)

D. D. CURRAN, *Sup't.*

I certify the above to be a correct copy of the original letter.

C. H. SCHOOLER.

254

SAVANNAH, GA.

Sloss Iron and Steel Company, Birmingham, Ala.

GENTLEMEN: Referring to yours of May 30th, in regard to invoice for coke in Georgia Pacific cars 16248 and 16231, which were shipped by your company on August 6th, 1891, to Mr. H. C. Roberts, S. K., Central railroad, Macon, Ga., I beg to advise that voucher covering this shipment has been forwarded to Mr. W. H. Green, general manager of the Richmond and Danville Railroad Company, at Atlanta, Ga., to whom I would respectfully refer you in the matter.

Yours truly,

(Signed)

GEO. DOLE WADLEY,

General Superintendent.

June 3d, 1892.

I certify the above to be a correct copy of the original letter.

C. H. SCHOOLER.

ATLANTA, GA., *March 31st, 1892.*

Mr. T. Seddon, president, Birmingham, Ala.

DEAR SIR: In response, I beg to state that I am holding Central vouchers in favor of the Sloss Iron and Steel Company, as follows:

January, 2743.....	2,953 74
" 3085.....	1,080 37
February, 3605.....	4,762 54
" 3658.....	773 97

Vouchers for the Virginia and Alabama Coal Company, due by the Central Railroad and Banking Company, were reported some time ago to Mr. J. R. Ryan, who, no doubt, has the memorandum of the same.

This letter also replies to a letter received this morning from Mr. Sims. Referring to this letter of the 2d of February, this is all the information that I have in reference to the Central vouchers. Any further information as to the making up of the vouchers can be had of V. E. McBee, general superintendent, or through his division superintendents.

If there is any way in which I can throw any light on this subject other than above, it will give me great pleasure to do all I can in the premises.

Yours very truly,
(Signed)

JOHN W. HALL, *Treas.*

I certify the above to be a correct copy of the original letter.

C. H. SCHOOLAR.

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SAVANNAH, GA., *May 17th, 1892.*

Sloss Iron and Steel Company, Birmingham, Ala.

GENTLEMEN: Replying to yours of the 14th inst., bill for \$79.80 was forwarded Mr. Figg, auditor Richmond and Danville railroad, Atlanta, Ga., May 3d, 1892. Bill for \$1,932.40 will be sent to Mr. Jno. W. Hall, treasurer Richmond and Danville railroad, Atlanta, Ga., tonight, as it was for coal furnished in February. You will please call on them, as we are not responsible for anything prior to 4th March.

Respectfully,
(Signed)

EDWARD MCINTYRE,
Comptroller.

I certify the above to be a correct copy of the original letter.

F. S. VINCENT.

256 BIRMINGHAM, ALA., June 6th, 1892.

Central Railroad and Banking Company of Georgia bought of Sloss Iron and Steel Company.

Statement No. 1.

[illegible]

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BIRMINGHAM, ALA., *June 6th*, 1894

Central Railroad and Banking Company of Georgia bought of Sloss Iron and Steel Company.

Statement No. 2.

Date.	No. of car.	Weight.	Date.	No. of car.	Weight.
1891.					
Dec. 30.....	5,153	49,800	Dec. 20.....	15,294	49,000
30.....	20,513	38,300	20.....	12,017	40,600
30.....	20,793	61,400	20.....	112	40,600
30.....	13,271	55,500	20.....	13,166	55,000
30.....	13,161	55,200	20.....	20,508	36,800
30.....	15,379	44,200	22.....	15,233	40,000
31.....	21,515	60,800	22.....	20,598	41,600
31.....	115	35,500	22.....	102	34,000
31.....	5,126	46,200	22.....	5,148	50,100
22.....	21,181	50,000	22.....	789	45,100
22.....	13,000	56,800	22.....	5,260	49,800
22.....	13,213	53,700	22.....	20,776	53,900
22.....	13,026	57,100	22.....	21,293	53,200
22.....	5,152	55,000	Jan. 22.....	709	49,600
8.....	20,970	51,000	22.....	792	47,300
8.....	13,001	50,200	23.....	5,263	50,000
8.....	21,155	47,000	23.....	13,112	53,700
8.....	20,674	38,700	23.....	21,144	53,000
8.....	20,609	39,000	23.....	70,136	38,600
259 12.....	5,111	57,300	25.....	21,495	59,300
12.....	5,122	53,300			
12.....	20,392	42,100			351,500
20.....	158	36,000	Br't up.....		1,923,000
20.....	6,867	48,000			2,274,500
20.....	20,643	39,400			
20.....	10,840	61,000			
20.....	15,360	50,800			

113,725 tons @ 95c., mines, \$1,080.37

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BIRMINGHAM, ALA., *June 6th*, 1892.

Central Railroad and Banking Company of Georgia bought of Sloss Iron and Steel Company.

Statement No. 3.

Date.	No. of car.	Weight.	Date.	No. of car.	Weight.
1892.			1892.		
Jan. 20.....	20,770	61,000	Feb. 17.....	723	49,000
20.....	21,150	56,300	17.....	131	38,400
20.....	20,528	44,000	18.....	20,615	40,500
20.....	14,534	34,400	18.....	20,536	46,000
20.....	14,538	41,500	18.....	20,410	40,000
20.....	793	47,000	18.....	21,452	59,700
20.....	5,135	52,500	22.....	5,210	59,500
20.....	20,710	46,900	23.....	164	37,700
Feb. 15.....	20,444	45,000	23.....	5,243	52,000
15.....	717	50,900	23.....	13,045	58,800
15.....	5,199	45,400	23.....	21,613	62,000
15.....	13,051	56,500	24.....	20,595	41,000
16.....	13,260	51,800	25.....	20,928	62,400
16.....	2,481	52,100	25.....	21,282	51,000
16.....	21,192	55,100	25.....	14,560	39,700
16.....	20,625	38,500			
17.....	13,143	60,400			1,629,400
17.....	16,054	52,400			814.70 tons at 95 cents, mines, \$773.97.

261 BIRMINGHAM, ALA., June 6th, 1894.

Central Railroad and Banking Company of Georgia bought of Sloss Iron and Steel Company.

Sheet No. 2 of Statement No. 4.

Date.	No. of car.	Weight.	Date.	No. of car.	Weight.	Summary.
1891.	Columbus.					
Feb. 8.	16,051	48,100	Feb. 18.	173	41,600	
8.	13,118	51,600	18.	18,568	61,400	
8.	21,106	49,300	18.	12,021	39,800	1st col. 2,073,500
8.	13,018	57,800	18.	15,332	45,200	2d col. 1,954,600
8.	15,293	40,600	18.	13,004	57,600	3d col. 2,113,000
8.	5,207	54,100	22.	20,987	51,500	4th col. 2,658,900
8.	20,972	40,200	22.	5,283	56,400	5th col. 1,826,400
8.	21,584	57,600	22.	755	48,700	
8.	18,713	56,900	22.	16,067	49,000	10,026,400
8.	18,700	53,000	22.	18,218	60,000	
8.	18,266	53,800	23.	15,379	49,000	50,132.20 tons
8.	18,126	41,000	23.	18,496	59,000	at 95c. at mines, \$4,762.54
9.	15,221	41,700	23.	18,372	56,000	
9.	15,377	39,800	23.	18,312	59,000	
9.	21,012	50,600	23.	18,672	57,000	
9.	20,916	49,600	23.	18,378	52,000	
9.	5,250	53,800	23.	18,069	56,000	
9.	14,585	42,400	24.	21,427	57,100	
262 9.	20,580	36,000	24.	18,747	55,100	
9.	16,083	54,000	24.	18,440	59,400	
9.	20,425	43,800	24.	18,552	59,200	
9.	20,303	41,000	24.	18,571	59,800	
15.	5,226	58,900	24.	18,196	59,200	
15.	20,600	39,500	24.	18,121	59,600	
15.	20,644	42,800	Jan. 30.	18,516	52,600	
15.	5,208	55,300	30.	131	37,400	
15.	20,735	58,100	30.	51,168	51,400	
16.	18,514	53,200	30.	18,149	56,100	
16.	18,196	60,500	30.	18,636	59,000	
16.	18,121	61,900	30.	13,239	49,300	
16.	18,272	58,800	30.	21,491	52,900	
16.	18,339	59,200	30.	21,559	49,100	
16.	18,340	57,400	30.	Macon		
17.	13,239	59,100	30.	18,468	54,500	
17.	24,813	50,800	30.	18,552	61,500	
17.	21,600	61,900				
17.	21,517	62,100				
17.	13,074	55,200				
17.	5,109	51,300				
17.	21,256	56,200				
		2,058,900			1,826,400	

BIRMINGHAM, ALA., *June 6th*, 1894.

Central Railroad and Banking Company of Georgia bought of Sloss Iron and Steel Company.

Statement No. 4.

THE VIRGINIA AND ALABAMA COAL CO., ETC., VS.											
Date.		No. of car.	Weight.	Date.		No. of car.	Weight.	Date.		No. of car.	Weight.
1892.		Macon.		Feb. 23.		Feb.					
Feb. 15.	.....	780	46,800	.....	18,168	59,400	4....	.....	5,079	40,300
15.	.....	13,127	54,300	.....	21,434	60,600	4....	.....	12,026	45,500
15.	.....	15,252	51,700	.....	20,801	59,800	4....	.....	5,184	54,800
15.	.....	16,084	48,600	.....	5,294	57,800	4....	.....	21,311	61,600
15.	.....	20,714	55,100	.....	5,112	48,000	4....	.....	15,329	43,200
15.	.....	13,110	52,400	.....	727	43,900	4....	.....	50,230	51,900
16.	.....	21,082	49,100	.....	15,258	41,000	4....	.....	14,517	41,700
16.	.....	789	50,800	.....	Columbus.	.....	4....	.....	18,523	50,800
16.	.....	5,135	57,400	.....	109	37,700	4....	.....	18,571	59,200
16.	.....	18,017	56,900	.....	14,556	38,500	5....	.....	18,228	55,300
16.	.....	18,057	59,800	.....	13,268	54,100	5....	.....	18,136	55,000
16.	.....	18,185	60,600	.....	22,983	42,800	5....	.....	18,747	56,000
16.	.....	18,187	60,100	.....	21,561	51,400	5....	.....	18,061	53,000
16.	.....	18,408	59,600	.....	21,023	49,900	5....	.....	18,302	48,000
16.	.....	18,622	62,600	.....	18,071	58,600	5....	.....	18,084	57,300
17.	.....	21,236	.....	.....	.....	.....	5....	.....	18,297	58,500
17.	.....	[21,236]*	49,400	.....	18,158	58,800	5....	.....	18,490	57,900
17.	.....	21,236	61,800	.....	.....	.....	5....	.....	18,742	59,000
17.	.....	20,739	58,800	.....	21,509	61,200	5....	.....	18,659	57,500
17.	.....	21,066	59,600	.....	15,254	48,300	5....	.....	18,701	55,000
17.	.....	21,424	58,800	.....	21,184	59,000	5....	.....	18,141	59,200
17.	.....	20,561	39,500	.....	29,783	60,200	5....	.....	18,399	54,800
17.	.....	20,635	39,800	.....	20,906	56,300	5....	.....	18,064	58,300
17.	.....	20,459	40,100	.....	13,226	48,300	5....	.....	20,478	44,600
17.	.....	174	37,200	.....	21,049	52,000	5....	.....	21,541	60,700
17.	.....	20,516	41,500	.....	13,193	40,400	5....	.....	13,280	54,900
17.	.....	20,453	49,900	.....	12,091	45,000	5....	.....	13,086	56,700
17.	.....	15,263	44,400	.....	15,386	45,000	5....	.....	21,478	57,800
17.	.....	20,985	53,000	.....	355	42,700	5....	.....	.....	.....
17.	.....	13,294	52,900	.....	21,153	50,000	5....	.....	.....	.....

C'gd C. P. R'y.

22	20,752	50,900	3	18,743	47,600	5	21,498	56,400
22	20,759	49,800	3	21,457	55,300	5	15,287	47,400
22	20,540	47,400	3	20,763	56,200	5	15,321	45,000
22	13,190	59,100	3	21,053	50,400	5	21,270	61,900
22	13,148	59,000	3	18,106	55,000	5	21,404	57,400
22	20,953	49,800	3	18,269	55,400	5	5,133	48,500
23	12,033	39,100	3	18,239	51,600	5	20,620	37,300
23	12,041	38,900	3	18,439	51,000	5	20,632	39,000
23	21,408	62,000	3	18,105	55,700	5	21,201	49,000
23	13,255	60,000	3	18,178	53,000	5	15,380	39,200
23	5,053	45,500	3	726	44,200	5	5,227	58,600
23	18,207	58,300	3	14,520	43,300	5	15,200	54,200
		2,073,500			1,924,600			2,113,000

[* Figures enclosed in brackets erased in copy.]

BIRMINGHAM, ALA., *June 6th*, 1894.

Central Railroad and Banking Company of Georgia bought of Sloss Iron and Steel Company.

Statement No. 5.

1892.	Date.	No. of car.	Weight.	Date.	No. of car.	Weight.	Date.	No. of car.	Weight.
Jan. 5	18,347	57,600	Jan. 12	.....	21,478	60,900	Jan. 22	.....
5	17,309	61,400	14	.....	5,273	51,500	22	.....
5	17,125	53,200	14	.....	21,003	56,500	22	.....
5	17,142	53,400	14	.....	21,149	49,700	22	.....
5	17,123	57,200	14	.....	15,337	57,800	22	.....
5	16,330	59,700	14	.....	266	21,000	22	.....
6	17,269	53,400	15	.....	16,445	62,000	22	.....
6	17,134	59,000	15	.....	16,451	56,700	22	.....
6	17,312	57,700	15	.....	16,504	47,400	22	.....
6	17,106	57,200	15	.....	16,352	56,400	22	.....
6	17,323	58,200	15	.....	16,440	60,000	22	.....
6	17,017	53,600	15	.....	16,284	61,400	22	.....
6	17,134	58,000	15	.....	16,232	59,700	22	.....
6	17,320	60,000	15	.....	16,077	60,300	22	.....
6	17,352	58,400	15	.....	16,743	55,000	22	.....
6	17,029	58,500	15	.....	16,615	60,100	22	.....
6	17,614	58,200	15	.....	16,532	55,500	22	.....
6	17,510	49,800	15	.....	16,040	58,600	22	.....
6	17,164	57,400	16	.....	16,612	60,200	22	.....
6	17,304	59,000	16	.....	782	49,800	22	.....
6	17,225	57,800	16	.....	13,220	56,000	22	.....
6	17,039	61,200	16	.....	13,226	51,700	22	.....
6	17,040	57,700	16	.....	5,281	53,400	22	.....
6	17,296	58,200	16	.....	18,428	53,400	22	.....
6	17,259	58,000	16	.....	18,592	61,200	22	.....
6	17,160	58,200	16	.....	20,063	49,200	22	.....
6	4,419	59,000	16	.....	20,941	48,800	22	.....
6	17,717	59,400	16	.....	18,292	53,600	22	.....
6	2,618	58,200	20	18,075	54,000	22
6	17,652	58,000	20	18,329	57,500	22
6	16,441	57,600	20	16,122	55,500	22

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BIRMINGHAM, ALA., June 6th, 1894.

Central Railroad and Banking Company of Georgia bought of Sloss Iron and Steel Company.

Statement No. 7.

Date.	No. of car.	Weight.	Date.	No. of car.	Weight.	
1892.	Savannah.		1892.			
Feb. 5.....	13,260	54,700	Feb. 12.....	20,092	41,800	1st col..... 2,002,400
5.....	21,119	49,000	12.....	20,910	51,200	2d col..... 2,003,800
5.....	785	45,500	12.....	5,044	50,800	<u>2,006,200</u>
5.....	16,060	43,300	12.....	13,274	55,700	<u>4,008,200</u>
5.....	13,083	52,000	12.....	16,036	52,000	
5.....	21,518	58,000	12.....	20,890	60,000	
5.....	20,857	55,700	13.....	21,407	52,400	
5.....	20,985	54,000	13.....	5,275	54,500	
5.....	16,029	45,400	13.....	21,475	54,000	
6.....	20,569	36,000	13.....	21,578	60,100	
6.....	20,512	44,000	13.....	20,889	56,700	
6.....	5,121	50,300	15.....	163	41,400	
6.....	21,143	56,800	15.....	502	41,000	
6.....	13,135	57,700	15.....	12,091	40,300	
6.....	21,004	57,000	15.....	15,380	47,400	
6.....	21,432	59,100	15.....	15,390	47,900	
6.....	20,773	62,000	15.....	708	50,400	
6.....	13,025	52,000	15.....	24,234	47,800	
6.....	13,173	50,500	15.....	20,862	62,400	
6.....	738	46,500	15.....	20,582	39,400	
9.....	21,123	55,000	15.....	21,227	50,400	
9.....	118	37,900	17.....	15,346	46,000	
9.....	16,069	49,000	17.....	20,964	50,700	
9.....	13,038	57,000	17.....	20,698	39,400	
9.....	12,048	42,000	17.....	13,088	60,200	
9.....	20,565	37,000	17.....	20,675	43,000	
9.....	14,512	42,000	22.....	21,034	52,300	
9.....	55,294	51,000	22.....	21,221	59,500	
10.....	21,163	51,600	22.....	13,107	56,200	
10.....	20,476	41,600	22.....	20,527	44,300	
						Recapitulation.
						1st col..... 2,002,400
						2d col..... 2,003,800
						<u>4,006,200</u>
						Tons..... 2,034.10 E. M.
						(6) 95c, mines..... \$1,032.40

269 Endorsement: Circuit court of United States, southern district of Georgia, eastern division. Sloss Iron and Steel Company *vs.* Central Railroad and Banking Company of Georgia *et al.* Intervention in case of Rowena M. Clarke *vs.* Central Railroad and Banking Company of Georgia. Filed December 3d, 1892. L. M. Erwin, deputy clerk.

I certify that on the 12th day of December, 1892, at Savannah, in my district, I personally served a copy of the within intervention of Lawton & Cunningham, attorneys for the Central Railroad and Banking Company of Georgia, and at the same time exhibiting to them this, the original.

Dated Savannah, Ga.

The return of—

WALTER P. CORBETT,

U. S. Marshal,

By J. C. HEYWARD, *Deputy.*

December 12th, 1892.

Filed December 13th, 1892.

L. M. ERWIN,

Deputy Clerk.

I hereby certify that on December 10th, 1892, at Atlanta, Ga., in my district, I served personally a copy of the within intervention on Thomas Cobb Jackson, of firm of Jackson & Jackson, attorneys of the Richmond and Danville Railroad Company, and at the same time exhibiting to him this, the original.

W. P. CORBETT,

U. S. Marshal,

By C. A. AVANT, *Deputy.*

Dated Macon, Ga., this 12th day of December, 1892.

Filed December 13th, 1892.

L. M. ERWIN,

Deputy Clerk.

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Demurrer of Central Railroad.

In the Fifth Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

ROWENA M. CLARKE *et al.*

vs.

THE CENTRAL RAILROAD AND BANKING COMPANY
OF GEORGIA *et al.*

THE CENTRAL RAILROAD AND BANKING COMPANY
OF GEORGIA

vs.

THE FARMERS' LOAN AND TRUST COMPANY OF
NEW YORK *et al.*

In Equity. Bill
for Receiver,
etc.

Intervention of the Sloss Iron and Steel Company.

The demurrer of the defendant The Central Railroad and Banking Company of Georgia to the intervention of the above-named intervenor.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the said intervention contained to be true in such manner and form as the same are herein set forth and alleged, doth demur to the said intervention, and for causes of demurrer sheweth :

1. That it appeareth by the intervenor's own showing by the said intervention that they are not entitled to the relief prayed by the intervention against this defendant.

2. That it appears by the said intervention that the coal and coke mentioned in the said intervention and set out in the exhibit was purchased by and furnished to the Richmond and Danville Railroad Company operating the Central Railroad and Banking Company of Georgia, and was not furnished to this defendant, The Central Railroad and Banking Company of Georgia, and that there is no privity between the said Richmond and Danville Railroad Company and this defendant.

Wherefore, and for divers other good causes of demurrer appearing on the said intervention, this defendant doth demur thereto, and prays the judgment of this honorable court whether it shall be compelled to make any answer to the said bill, and humbly prays to be hence dismissed with its reasonable costs in this behalf sustained.

LAWTON & CUNNINGHAM,
DENMARK & ADAMS,

Solicitors for Defendant.

I hereby certify that the foregoing demurrer is in my opinion well founded in point of law.

H. C. CUNNINGHAM,
Of Counsel for Defendant.

GEORGIA,)
Chatham County.)

Personally appeared H. M. Comer, president of the Central Railroad and Banking Company of Georgia, who being duly sworn deposes and says that the foregoing demurrer is not interposed for delay.

H. M. COMER.

Sworn to and subscribed before me, this January 2d, 1893.

H. W. JOHNSON,
Notary Public, Chatham County, Georgia.

Endorsement: In the circuit court of the United States for eastern division, southern district of Georgia. Rowena M. Clarke *et al.* vs. The Central Railroad and Banking Company of Georgia *et al.* Intervention of Sloss Iron and Coal Company. Demurrer of Central Railroad and Banking Company of Georgia. Filed in office, this January 2d, 1893.

H. H. KING, Clerk.

272 Demurrer of H. M. Comer, Receiver.

In the Fifth Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

ROWENA M. CLARKE <i>et al.</i>	} In Equity. Bill for Receiver, etc.
vs.	
THE CENTRAL RAILROAD AND BANKING COMPANY OF GEORGIA <i>et al.</i>	
THE CENTRAL RAILROAD AND BANKING COMPANY OF GEORGIA	
vs.	
THE FARMERS' LOAN AND TRUST COMPANY OF NEW YORK <i>et al.</i>	

Intervention of the Sloss Iron and Coal Company.

The demurrer of the defendant H. M. Comer, as receiver of the Central Railroad and Banking Company of Georgia, to the intervention of the above-named intervenor.

This defendant, by protestation, not confessing or acknowledging all or any of the matters or things in the said intervention contained to be true in such manner and form as the same are herein set forth and alleged, doth demur to the said intervention, and for causes of demurrer sheweth:

1. That it appeareth by the intervenor's own showing by the said intervention, that they are entitled to the relief prayed by the intervention against this defendant.

2. That it appears by the said intervention that the coal and coke mentioned in the intervention and set out in the exhibit was purchased by and furnished to the Richmond and Danville Railroad Company operating the Central Railroad and Banking Company of Georgia, and was not furnished to this defendant as receiver of the Central Railroad and Banking Company of Georgia, and that there is no privity between the said Richmond and Danville Railroad Company and this defendant.

Wherefore, and for divers other good causes of demurrer appearing on the said intervention, this defendant doth demur thereto, and prays the judgment of this honorable court whether he shall be compelled to make any answer to the said bill; and humbly prays to be hence dismissed with his reasonable costs in this behalf sustained.

LAWTON & CUNNINGHAM,
DENMARK & ADAMS,
Solicitors for Defendant.

I hereby certify that the foregoing demurrer is in my opinion well founded in point of law.

H. C. CUNNINGHAM,
Of Counsel for Defendant.

GEORGIA,)
Chatham County. }

Personally appeared H. M. Comer, receiver of the Central Railroad and Banking Company of Georgia, who, being duly sworn, deposes and says that the foregoing demurrer is not interposed for delay.

H. M. COMER,

Sworn to and subscribed before me, this January 2d, 1893.

H. W. JOHNSON,
Notary Public, Chatham County, Georgia.

Endorsement: In the circuit court of the United States for eastern division, southern district of Georgia. Rowena M. Clarke *et al. vs.* The Central Railroad and Banking Company of Georgia *et al.* Intervention of Sloss Iron and Coal Company. Demurrer of H. M. Comer, receiver of Central railroad. Filed in office, this January 2d, 1893. H. H. King, clerk.

Amendment to Intervention.

Circuit Court of the United States, Southern District of Georgia.

ROWENA M. CLARKE

vs.

THE CENTRAL RAILROAD AND BANKING COMPANY *et al.*

} Bill.

FARMERS' LOAN AND TRUST COMPANY

vs.

THE CENTRAL RAILROAD AND BANKING COMPANY *et al.*

} Same.

Intervention of Sloss Iron and Coal Company.

Now comes the intervenor and prays leave to amend its intervention by inserting as intervenor the name of "the Virginia and Alabama Coal Company, suing for the use of the Sloss Iron and Coal Company."

HILL, HARRIS & BIRCH,

Counsel for Intervenor.

The amendment is allowed.

EMORY SPEER, *Judge.*

Endorsement: Rowena M. Clarke *vs.* Central Railroad and Banking Company of Georgia. Intervention of Sloss Iron and Coal Company. Amendment and order allowing. Filed December 22d, 1893. L. M. Erwin, deputy clerk.

Order Referring Intervention to W. D. Nottingham, Esq., Special Master.

In Circuit Court of U. S., So. Dist. of Ga., Eastern Division.

SLOSS IRON AND COAL COMPANY

vs.

CENTRAL RAILROAD AND BANKING COMPANY OF GEORGIA *et al.*

} Intervention in Case of
Rowena M. Clarke *vs.*
C. R. R. and Bank-
ing Co. of Ga.

It appearing to the court that this intervention relates to the same or similar matter as those embraced in the intervention of the Virginia and Alabama Coal Company—that the issues and the evidence in both interventions are similar, and it further appearing that by order of the court heretofore granted, the latter intervention has been referred to W. D. Nottingham, Esq., special master:

It is ordered that this intervention be referred to W. D. Nottingham, and that he proceed to take the evidence thereon and report on the same in pursuance of the general order of the court in the case of Rowena M. Clarke *vs.* The Central Railroad and Banking Company of Georgia.

EMORY SPEER, *U. S. Judge.*

Endorsement: United States circuit court, eastern division, southern district of Georgia. Sloss Iron and Steel Company *vs.* The Central Railroad and Banking Company of Georgia. Order referring intervention to W. D. Nottingham, Esq. Filed February 22d, 1893. L. M. Erwin, deputy clerk.

In the Fifth United States Circuit Court, Western Division, Southern District of Georgia.

MRS. ROWENA M. CLARKE

vs.

THE CENTRAL RAILROAD AND BANKING COMPANY OF
GEORGIA.

} In Equity.

In the Circuit Court of the U. S., Southern District of Georgia,
Eastern Division.

Intervening petition of the Sloss Iron and Steel Company, referred
to Warren D. Nottingham, special master.

Statement of the Case.

The Sloss Iron and Steel Company, intervening in said above-stated original cause, complain against the Central Railroad and Banking Company of Georgia, the Richmond and Danville Railroad Company, and H. M. Comer, receiver of said Central Railroad and Banking Company of Georgia.

276 The intervention attaches such allegations of the original bill as appertinent to the cause made, and especially those charges referring to operation of said Central Railroad and Banking Company of Georgia, under lease or color of lease, by said Richmond and Danville Railroad Company, and avers that during the period of such operation intervenor sold to said Richmond and Danville Railroad Company, to be used and consumed in the operating of said Central Railroad and Banking Company of Georgia, coal and coke to the amount of the principal sum of fourteen thousand three hundred and fifty-nine dollars and thirty-eight cents (\$14,359.38), attaching an itemized statement of account.

The petition further avers that the coal was to be delivered to division superintendents of the said Central Railroad and Banking Company upon their orders, and that it was so delivered, and was actually used in the operation of said Central Railroad and Banking Company of Georgia.

The first exhibit shows the particulars of the debt sued on, the numbers of the cars, weights and prices of the coal, and the intervention alleges that this account was made out on the books of the intervenor against the Central Railroad and Banking Company, for the reason that the coal and coke was bought for said Central by the Richmond and Danville Railroad Company, and that the accounts for the coal have been audited by the officers and agents of defendants.

Intervenor further alleges in his petition that the said Richmond and Danville Railroad Company and the said Central Railroad Company are jointly and severally indebted to it for the coal so bought and used, the former because it purchased the coal and the latter because the coal was purchased for its use, and was actually used by it in the necessary operation of said road and in discharge of obligations to the public imposed by law.

The intervenor further charges that a considerable part of said coal was on hand in the bins of said Central Railroad and Banking Company, and went into the possession of the receiver appointed by this honorable court to take possession of the Central Railroad and Banking Company and its properties, and that H. M. Comer, said receiver, is liable for the value of said coal so used by him, the value at Savannah, Macon, Atlanta, Augusta and other points where it went into the receiver's possession as aforesaid, on March 4th, 1892, being placed at \$2.50 per ton.

277 Intervenor maintains that its demands is a claim for coal so used by the receiver, is for operating expenses of the receivership, and the first lien on the property of said Central Railroad and Banking Company, but being unable to state the precise amount of coal for which the receiver is liable, asks leave to make proof before the master of the same, and that defendants be required to produce at said hearing all books and documents which will show such amount.

Intervenor expressly waives discovery from defendants, and concludes with a prayer for a decree against the Richmond and Danville Railroad Company against the Central Railroad and Banking Company for the principal sum sued for, and against H. M. Comer, receiver, for the value of the coal which went into possession of the receivers of the Central Railroad and Banking Company of Georgia on March 4th, 1892.

In the Fifth United States Circuit Court, Southern District of Georgia, Western Division.

MRS. ROWENA M. CLARKE

vs.

THE CENTRAL RAILROAD AND BANKING COMPANY
OF GEORGIA *et al.*

} In Equity, etc.

In the United States Circuit Court, Eastern Division, Southern District of Georgia.

Intervening petition of the Sloss Iron and Steel Company, referred to Warren D. Nottingham, Esq., special master.

Findings of Fact.

To the honorable judges of said court :

The special master in above-stated intervention begs leave to submit the following as his findings of *the* fact from the evidence introduced in the above-stated intervention :

1st. Intervenor furnished and delivered along the lines of the Central Railroad and Banking Company of Georgia coal to the amount of \$14,359.38 in pursuance of a contract to furnish said coal, which contract is evidenced by its acceptance as embodied in the letter signed by Jos. P. Minetree, general purchasing agent, modified and explained by the testimony of Thos. Seddon, president of intervenor, who says that for his company he adopted said contract made with the Virginia and Alabama Coal Company, with the additional understanding with W. H. Greene, general manager of the Richmond and Danville Railroad Company and of the Central Railroad and Banking Company of Georgia, that for so much of the coal described in the contract as intervenor should furnish upon the orders of J. R. Ryan, president of said Virginia and Alabama Coal Company.

2d. Intervenor had no information of the fact that a lease or color of a lease existed between the Central Railroad and Banking Company and the Richmond and Danville Railroad Company save and except the general notoriety of the same.

3d. It appears from the records of the original cause and the evidence in this intervention that at the time this contract was entered into the Richmond and Danville Railroad Company was operating the Central Railroad and Banking Company of Georgia under lease or color of lease, and a part of the obligations of said Richmond and Danville Railroad Company was that it should furnish such supplies as are the subject-matter of this intervention in the operation of said Central Railroad and Banking Company of Georgia.

4th. Of the coal delivered under said contract by intervenor, 10,968.60 tons, of the value of \$1,320.17, were delivered prior to and including March 4th, 1892, when the receiver was appointed: 816.85 tons, of the value of \$776.00, were unloaded after March 4th, 1892, and said receiver was appointed, and 158.55 tons, of the value of \$150.62, were unloaded at dates unknown, and all of said coal was shipped from the mines subsequent to the 13th day of July, 1891. The total amount of coal found on the bins on the 4th day of March, 1892, and which, in addition to that delivered subsequent to that date, went into the hands of the receivers of the Central Railroad and Banking Company of Georgia and used by them in the operation of the company's lines, as shown by the report of Messrs. Schooler and Starke, expert examiners, and as explained by the affidavit of R. L. Shaw, was 13,872 tons. The *pro rata* of this amount which under the agreement between the four (4) companies furnished coal to the Central Railroad and Banking Company of Georgia, amounts to 4,018 tons, of the contract value of \$3,818.00, and of the value — \$10,045.00, if valued at \$2.50 per ton, which valuation includes freight, unloading, etc.

279 In this item of the report, the master relies upon the testimony furnished by the expert examiners, as well as the affidavit referred to and the evidence of Thomas Seddon, president of intervenor, and also the written agreement between the four (4) companies referred to, and in the computation of the value above set forth, the contract price of ninety-five (95) cents per ton is used.

5th. The coal found in the bins on March 4th, 1892, was placed there by four (4) companies, to wit: the Virginia and Alabama Coal Company; the Sloss Iron and Steel Company; Corona Coal and Coke Company; Little Warrior Coal Company; while the expert examiners reported that they found another name of a coal company upon the books of the Central Railroad and Banking Company, to wit: the Tennessee Coal, Iron and Railroad Company, that the evidence in the affidavit of G. B. McCormick shows that no coal was furnished by this company within one year prior to the 4th day of March, 1892, and that said company had no demand on any coal in said bins.

6th. The market value of the coal found in the bins on March 4th, 1892, and that which was delivered subsequent to said date, as appears from the evidence of Thomas Seddon, and which valuation included the actual value at the mines, independent of the contract price, \$1.02 per ton, the freight and expense of unloading was for delivery at the points named below as follows:

69.65 tons to Spartanburg, S. C., at \$2.50 per ton.....	\$174 32
20.50 " " Savannah, Ga., " 2.50 "	51 25
20.00 " " McCormick, S. C., " 2.50 "	50 00
50.05 " " Troy, Ala., " 2.50 "	125 37
51.85 " " Albany, Ga., " 2.50 "	129 62
25.00 " " Americus, Ga., " 2.50 "	62 50
134.15 " " Smithville, Ga., " 2.50 "	325 37
273.10 " " Macon, Ga., " 2.50 "	682 75
172.55 " " Augusta, Ga., " 2.50 "	431 37
<hr/>	
	\$2,032 56

The average value of coal at these several bins would by evidence of Mr. Seddon be more than \$2.50 per ton, but this is limit of value declared in petition and is used.

The market value of intervenor's *pro rata* of coal found in bins on March 4th, 1892, getting *pro rata* 4,018 tons at \$2.50 per ton as testified by Mr. Seddon, he saying that account in petition was correct, \$10,045.00, making the total valuation of the coal which went into the hands of the receivers, as fixed by the witnesses and without regard to the contract price, \$12,077.56.

This coal found in the bins and delivered subsequent to March 4th, 1892, was used by the receivers in conducting the business of said Central Railroad and Banking Company of Georgia.

7th. By agreement the evidence as contained in the affidavit of Mr. E. P. Alexander, and which will be of file and copied into the report in the case of the intervention of the Macon foundry and machine works in Rowena M. Clarke *et al.* vs. The Central Railroad and Banking Company of Georgia *et al.*

8th. The special master finds a discrepancy in the evidence for plaintiff in that the number of tons set forth in the itemized statements attached to petition, which statements were not only verified by the testimony of Mr. J. R. Seddon, but also are supported by

the letters written to intervenor by the officers and agents of the defendants.

9th. It appears that the only proper reconciliation of this conflict would be a finding in favor of intervenor for the fullest amount proven within the limit of its petition against the defendant companies, and holding to a strict proof as to the liability of the receivers.

Upon this idea the master finds there *was* 4,918 tons of coal, of the contract value of \$3,817.10, which was found in the bins and went into the hands of the receiver, and the further amount of 816.85 tons which were unloaded after the appointment of the receiver, and likewise went into the hands of the receiver. This amount of coal was worth at a contract price of 95 cents per ton, making at that price \$776.00, making a total contract valuation of the coal which went into the hands of the receiver and was used by them in operating the lines of said Central Railroad and Banking Company of Georgia, of \$4,593.10, which amount deducted from the total amount which intervenor has proven against the defendant companies, to wit: the sum of \$13,359.38, leaves a balance of \$8,766.28.

10th. This fuel was necessary to keep the Central Railroad and Banking Company a "going concern" and to conserve its properties and values.

Respectfully submitted.

WARREN D. NOTTINGHAM,

Special Master.

281 In the Fifth United States Circuit Court, Western Division,
Southern District of Georgia.

MRS. ROWENA M. CLARKE *et al.*

vs.

THE CENTRAL RAILROAD AND BANKING COMPANY OF } In Equity.
GEORGIA *et al.*

In the Circuit Court, Eastern Division, Southern District of Georgia.

Intervention of the Sloss Iron and Steel Company, referred to
Warren D. Nottingham, Esq., special master.

Conclusions of Law.

To the honorable judges of said court:

As a final report your special master submits the following legal conclusions, based upon the law and the testimony in this case:

Intervenor dealt with the officers and agents of the Richmond and Danville Railroad Company, who were likewise officers and agents of the Central Railroad and Banking Company of Georgia. They were so known to him, and while the coal, which is the subject-matter of this intervention was sold to the Richmond and Dan-

ville Railroad Company, it was to be used in the operation of the Central Railroad and Banking Company of Georgia, whose lines were being operated by the Richmond and Danville under a lease or color of lease, of which lease intervenor had no other information except general notoriety.

Upon this state of facts the master concludes that both the defendant companies were liable for this indebtedness; that one corporation cannot exempt itself from liability to the public in the absence of express contract by leasing its rights and franchises to another corporation without express legislative authority so to do, which authority should contain the exemption claimed; among other authorities our own supreme court has so decided in the 70th Ga., page 70.

This is also cited as law in Redfield's Law of Railways, page 616.

There was no evidence of such legislative authority or of such express contract mentioned.

2d. Having found in this conclusion of fact that this coal was necessary to maintain the operation of the Central railroad and to conserve its properties, it is considered a preferential debt, within the meaning of the terms used in Farmers' Loan and Trust Company *vs.* Kansas City W. & N. W. R. Company in 53d Fed. Rep., page 187.

Also in case of Fosdick *vs.* Schall, 99th U. S., page 235.

Again in Haile *vs.* Frost, page 389, in the same volume, and also in the case of Burnham *vs.* Bohen, 111th U. S., page 776.

In the case of Haile *vs.* Frost referred to, priority is given upon a demand for materials furnished three years before the appointment of a receiver.

3d. It is therefore considered that the receivers of the Central Railroad and Banking Company of Georgia, H. M. Comer, should pay all indebtedness that is in this case adjudged against said Central railroad, and should pay the same out of the current earnings of said company, or if they have been diverted, they should be paid out of any other funds on hand, or that may come into his hands belonging to said Central Railroad and Banking Company.

4th. Intervenor having parted with the title to this coal by virtue of an express contract, for the sum of 95 cents per ton, and having delivered all of the coal in terms of the contract in quantities and at places therein specified, and the receivers having taken possession of the coal found in the bins and of that which was unloaded after their appointment, the master does not think intervenor has the right to waive what he calls a tort in the taking of possession of this coal by the receivers, and holds them responsible for a *quantum valebat*. The receivers having taken possession of this coal by virtue of their authority as receivers of the properties, all the properties, of the said Central railroad in the opinion of the master the title to the coal so taken possession of vested in said receivers, without any further consent on the part of intervenor. The master therefore finds against that contention of intervenor which declares for and prays judgment for the sum of twelve thousand and seventy-

seven and $\frac{56}{100}$ dollars (\$12,077.56) as the value of the coal independent of contract prices, at the time and place when and where the receivers obtained it. Should the master allow this sum against the receivers, it would simply represent the value of four thousand, eight hundred and thirty-four tons and leave a balance of ten thousand, two hundred and eighty tons, delivered and used before the receivers were appointed, which at 95 cents per ton, would, taking intervenor's view as correct, seem to authorize an additional
 283 judgment against the defendant companies for the sum of nine thousand, seven hundred and sixty-six (\$9,766.00) dollars.

The injustice that would be done defendants by such a finding is plainly seen by a comparison of the figures, for should intervenor's contention be allowed, he would get total judgments amounting to twenty-one thousand eight hundred and forty-three (\$21,843.00) dollars for coal, the title to which he parted with by express contract for the sum of fourteen thousand three hundred and fifty-nine and $\frac{38}{100}$ (\$14,359.38) dollars.

5th. Finally, for reasons already given, the master reports and recommends that a judgment be entered against the Central Railroad and Banking Company of Georgia, H. M. Comer, receiver thereof, and the Richmond and Danville Railroad Company, for the principal sum of fourteen thousand three hundred and fifty-nine and $\frac{38}{100}$ (\$14,359.38) dollars, and 7 per cent. per annum interest thereon from March 4th, 1892, to be had and recovered, together with all costs in this behalf incurred, against each and every of said defendants, jointly and severally.

The master further finds and reports that whenever the receiver aforesaid, or the said Central Railroad and Banking Company of Georgia shall pay said judgment or any part thereof, for such part or payments, the said defendants so paying shall have and recover of the Richmond and Danville Railroad Company the amounts paid on said judgment to the total amount of ten thousand two hundred and eighty dollars and interest thereon, this being the contract value of the coal used by the Richmond and Danville Railroad Company in the operation of the Central Railroad and Banking Company of Georgia, and which they were obligated to furnish to the said Central, and which was actually used before the appointment of the receiver.

Respectfully submitted.

WARREN D. NOTTINGHAM,

Special Master.

284 In the Fifth United States Circuit Court, Western Division,
Southern District of Georgia.

ROWENA M. CLARKE *et al.*

vs.

THE CENTRAL RAILROAD AND BANKING COMPANY OF } In Equity.
GEORGIA *et al.*

In the United States Circuit Court, Eastern Division, Southern
District of Georgia.

Intervention of the Sloss Iron and Steel Company, referred to
Warren D. Nottingham, special master.

Report filed July 8th, 1893.

Supplemental Report of Special Master.

To the honorable judges of said court :

Since the filing of said above-stated report, counsel having called the attention of the special master to a piece of testimony that was omitted from the report by reason of the fact that it was in the hands of one of the counsel, who expected to be further heard before said report was filed, the special master begs leave of the court to submit the following supplemental report, to be considered together with the report already filed :

From the evidence referred to, and which is hereto attached, it appears that of the coal shipped to Augusta by the four several companies, named in said report, there was as much as nine thousand seven hundred and fifty-two (9,752) tons used by the Port Royal and *and* Augusta Railroad Company, the Port Royal and Western Carolina Railroad Company, and the Charlotte, Columbia and Augusta Railroad Company, during the months of October, 1891, to March 4th, 1892, inclusive. Adopting the *pro rata* agreement of said four coal companies, we find that intervenor's proportion of the coal used from the bins by said three railroad companies amounts to 2,824 tons of the coal sold by intervenor to the Richmond and Danville Railroad Company and the Central Railroad and Banking Company of Georgia, which were not used by said Central Railroad and Banking Company, and should therefore not be chargeable to the receiver of said last-named company. This coal was worth at the contract price \$2,682.80.

285 The special master therefore reports that so far as the judgment is against the receiver, found in the original report, it should be abated to the amount of \$2,682.80, and interest thereon from the 4th day of March, 1893, at 7 per cent. per annum.

Respectfully submitted.

WARREN D. NOTTINGHAM.

Special Master.

Exception of Richmond and Danville Railroad Co.

In the Circuit Court of U. S. for the Eastern Division of the Southern District of Georgia.

MRS. ROWENA M. CLARKE *et al.*

vs.

CENTRAL RAILROAD AND BANKING COMPANY *et al.* }

In re intervention of Sloss Iron and Steel Company.

And now comes the Richmond and Danville Railroad Company and reserving to itself all benefit of exception to the jurisdiction of said court over it in said cause and all benefit under its motion to dismiss said intervention, and being dissatisfied with the report of W. D. Nottingham, special master, comes now within thirty days from the filing of said report, and excepts thereto and says that the special master erred in finding that the judgment be entered against the Central Railroad and Banking Company of Georgia, H. M. Comer, receiver thereof, and the Richmond and Danville Railroad Company for the principal sum of \$14,359.38 and 7 per cent. per annum interest thereon from March 4th, 1892, to be had and recovered together with all costs in this behalf incurred against each and every of said defendants jointly and severally—the error being that said finding was contrary to law and the evidence in this that the only witness who testified as to the contract testified that the coal had been sold and delivered as a part of the contract made by J. P. Ryan embodied in the letter of July 13th, 1893, and signed by Joseph P. Minetree, general purchasing agent. And it further appearing by the evidence that said J. P. Ryan made his contract with the Central Railroad and Banking Company of Georgia upon the statement by said Minetree that the latter was authorized to contract for said Central Railroad and Banking Company, and that said Ryan positively refused to sell said coal to the Richmond and Danville Railroad Company.

286 2. That said master erred in finding and reporting that upon the payment of said sum (\$14,359.38) or any part thereof by the receiver of said Central Railroad and Banking Company for such part or part payment, the defendant so paying shall have and recover of the Richmond and Danville Railroad Company the amounts paid on said judgment to the total amount of \$10,280.00, this being found to be the contract value of the coal used by the Richmond and Danville Railroad Company in the operation of the Central Railroad and Banking Company of Georgia, and which they were obligated to furnish to the said Central railroad, and which was actually used before the appointment of a receiver. The error being that said finding was contrary to law in that there was no contract expressed or implied between the Richmond and Danville Railroad Company and the Central Railroad and Banking Company of Georgia and no privity between the said companies. That said finding is contrary to the evidence and without evidence to support it.

3. That the said master erred in filing a supplemental report, his

jurisdiction and authority having ceased upon his filing the original report if any he had prior thereto.

4. That the master erred in said supplemental report in finding that 2,824 tons of coal sold by the intervenor was not used by the Central Railroad and Banking Company, and in finding that this coal was worth \$2,622.80, and that so far as the judgment and finding of the master in the original report is against the receiver, it should be abated to the amount of \$2,682.80 and interest thereon from the fourth day of March, 1892, at 7 per cent.

5. That the said master erred in making or filing any report in said case, in this: That the said master and this honorable court were without jurisdiction over this defendant, the bill of Rowena M. Clarke *vs.* Central Railroad and Banking Company of Georgia *et al.* having been dismissed by the order and decree of Justice Jackson prior to July 8th, 1893, when said report was filed.

Wherefore for causes set forth, the said Richmond and Danville Railroad Company prays that the said report of said master be not confirmed, but that the same be set aside and stricken from the file.

HENRY JACKSON,

J. R. LAMAR,

Solicitors for Richmond and Danville Railroad Company.

287 Endorsement: Rowena M. Clark *et al. vs.* Central Railroad and Banking Company of Georgia *et al.* and consolidated cases. Exceptions to master's report in Sloss Iron and Steel Company. Filed by Richmond and Danville railroad. Filed August 4th, 1893. L. M. Erwin, deputy clerk.

Exceptions of Central Railroad and Banking Company of Georgia and H. M. Comer, Receiver.

In the Circuit Court of the United States for the Southern District of Georgia.

ROWENA M. CLARKE *et al.*

vs.

THE CENTRAL RAILROAD AND BANK-
ING COMPANY OF GEORGIA *et al.*

THE CENTRAL RAILROAD AND BANK-
ING COMPANY OF GEORGIA

vs.

THE FARMERS' LOAN AND TRUST
COMPANY.

THE FARMERS' LOAN AND TRUST
COMPANY

vs.

THE CENTRAL RAILROAD AND BANK-
ING COMPANY OF GEORGIA *et al.*

Intervention of Sloss Iron
and Steel Company.

Exceptions to Master's Report.

And now comes the Central Railroad and Banking Company of Georgia, and H. M. Comer, receiver of the Central Railroad and

Banking Company of Georgia, and except to the report of W. D. Nottingham, special master, filed on July 8th, 1893, and as amended on the above-stated intervention, and for cause of exception say :

Exceptions to Finding- of Fact.

First exception. That the master, in his first finding of fact, found that the intervenor furnished and delivered along the lines of the Central Railroad and Banking Company of Georgia coal to the amount of \$14,359.38 in value, in pursuance of a contract 288 made with Joseph P. Minetree and with W. H. Green, general manager of the Richmond and Danville Railroad Company, and of the Central Railroad and Banking Company of Georgia, which finding exceptors say is error; that the evidence affirmatively discloses the fact that at the time of the making of the contract referred to Joseph P. Minetree was general purchasing agent of the Richmond and Danville Railroad Company, and not of the Central Railroad and Banking Company of Georgia, and that W. H. Green was general manager of the Richmond and Danville Railroad Company, and not of the Central Railroad and Banking Company of Georgia, and that said contract was not made with the Central Railroad and Banking Company of Georgia or any of its agents at all, because the evidence affirmatively shows that, at the time of the making of said contract, the Central Railroad and Banking Company of Georgia had ceased to operate its railroad lines, and that the said lines were being operated by the Richmond and Danville Railroad Company, and that the Virginia and Alabama Coal Company and the Sloss Iron and Steel Company were fully apprised of these facts.

In support of this exception, exceptors refer to the testimony of E. P. Alexander, pages 1, 2 and 3, and particularly to the Herein testimony of J. R. Ryan, reported by the master, and attached to his report on the intervention of the Virginia 243 and Alabama Coal Company, which evidence was taken as 244 well on this intervention (pages 20, 21, 26, 27 and 28 of 245 said report); also the testimony of Thomas Seddon (master's 128 report to this intervention, pages 19, 20, 25, 26, 27 and 28). 133 Reference is also made to the copy of the agreement of July 134 13th, 1891, attached as an exhibit to the intervention of 312 the Virginia and Alabama Coal Company showing that 313 Joseph P. Minetree was purchasing agent of the Richmond 48 and Danville Railroad Company, and held himself out as such on the letter-head on which said agreement was written, and that he did not sign the same as purchasing agent for the Central Railroad and Banking Company of Georgia.

Second exception. Exceptors except to the fourth finding of fact made by the master, wherein he finds that 10,968.61 tons of coal were delivered prior to and including March 4th, 1892, and 816.85 tons of coal were unloaded after March 4th, 1892, and 158.55 tons were delivered at dates unknown, under the contract aforesaid, if by said finding it is intended by said master that said coal was delivered to the Central Railroad and Banking Company of Georgia, and

assigns his said finding as error; and exceptors also except
 289 to said finding, "that the total amount of coal found in the
 bins on March 4th, 1892, and which in addition to that deliv-
 290 ered subsequent to that date, went into the hands of the receivers
 of the Central Railroad and Banking Company of Georgia, and used
 by them in the operation of said company's lines, as shown by the
 report of Schooler and Starke, expert examiners, and as explained
 by the affidavit of R. L. Shaw, was 13,872 tons," and exceptors assign
 the said finding as error. Exceptors say that said master should
 have found "that the coal furnished by the intervenor was fur-
 nished to the Richmond and Danville Railroad Company, in part,
 in operating the lines of the Central Railroad and Banking Company
 of Georgia, and in part in the operation of the lines controlled by
 the Richmond and Danville Railroad Company, which were not
 lines of the Central Railroad and Banking Company of Georgia, nor
 lines leased by said Central Railroad and Banking Company of
 Georgia, and that the amount of coal so furnished was used by the
 Richmond and Danville Railroad Company, in part, and that the
 said coal was used by the said Richmond & Danville R. R. Co. on
 lines of the Central Railroad and Banking Company of Georgia and
 lines under lease to the Central Railroad and Banking Company of
 Georgia, and in part on the lines of the Savannah and Western
 Railroad Company, and in part on the lines of the Port Royal and
 Augusta Railroad Company, and on the lines of the Port Royal and
 Western Carolina Railway Company, and on the lines of the Char-
 lotte, Columbia and Augusta Railway Company, and miscellaneous
 lines and companies not lines of the Central Railroad and Banking
 Company of Georgia, and, in part, the coal sued for could not be
 traced to any railroad lines further than to the Richmond and Dan-
 ville Railroad Company, where and when delivered to it at the
 mines; that a correct statement of the various points of
 Herein shipments and lines on which said coal was delivered is
 295 shown on Exhibits A and B, hereto attached, Exhibit A
 296 showing the amount unloaded on various lines prior to
 the receivership of March 4th, 1892, and Exhibit B show-
 ing the amount unloaded on the various lines after March
 4th, 1892, and that the amount of coal in the bins of the
 Central Railroad and Banking Company of Georgia, and
 297 the bins of the Savannah and Western Railroad Company
 on March 4th, 1892, is shown on Exhibit C; and whereas
 said master should have found that of the coal in the bins of the
 Central Railroad and Banking Company of Georgia, at Augusta,
 the following amounts of coal were used by the following
 290 railroads respectively during the time the Richmond and
 Danville Railroad Company was operating the Central Rail-
 road and Banking Company of Georgia, to wit:

Port Royal and Augusta railroad	1,518 tons
Port Royal and Western Carolina railway	6,110 tons
Charlotte, Columbia and Augusta railway	2,124 tons
Total	9,752 tons

And that, if this be apportioned between the Virginia and Alabama Coal Company, the Sloss Iron and Steel Company, the Corona Coal and Coke Company, and the Little Warrior Coal Company, in ratio of their agreement of November 26th, 1892 (see Master's Report, page 37), the Sloss Iron and Steel Company's proportion of the coal so used by these companies would be 28.90 per cent.; so that we would have the amount of coal of the Sloss Iron and Steel Company used by other roads than the Central from the Augusta bins, as follows:

By Port Royal and Augusta railroad.....	438.70 tons
By Port Royal and Western Carolina railway.....	1,765.79 tons
By Charlotte, Columbia and Augusta railway.....	613.83 tons
Total.....	2,818.32 tons

And, whereas, said master should have found that the consolidated statement, hereto attached as "Exhibit D," shows a disposition of the coal of the Sloss Iron and Steel Company, shipped by them under said contract with the Richmond and Danville Railroad Company as aforesaid, if the coal in the bins on March 4th, 1892, be apportioned in accordance with the agreement between said coal companies.

In support of this exception exceptors refer to the report of Schooler and Starke, experts, designated as "Report No. 1," pages 1, 9 and 10, giving the total of coal unloaded at various points; and their report designated as "Report No. 2," page 1, and their report designated as "Report No. 4," page 1; said reports showing the various amounts of coal delivered before March 4th, 1892, and after that date; and also the coal not traceable to any particular road, and showing the places where said coal was unloaded. Reference is made also to the affidavit of S. R. Shirm, referred to in the supplemental report of the master, on the point as to the amount of coal used by the Port Royal and Augusta, the Port Royal and Western Carolina, and the Charlotte, Columbia and Augusta railroads, out of the Augusta bins, also the experts' report, designated as No. 3, showing coal in the bins.

Third exception. Exceptors except to the fifth finding of fact made by the master, that the coal found in the bins on March 4th, 1892, was placed there by the four companies, to wit: The Virginia and Alabama Coal Company, the Sloss Iron and Steel Company, the Corona Coal and Coke Company, and the Little Warrior Coal Company, and assigns this finding as error.

In support of this exception, reference is made to the testimony of C. H. Schooler, reported by the master in his report on the Virginia and Alabama Coal Company's intervention (see Master's Report, pages 56, 68 and 69), that being all the testimony in the case on that point; but it appearing, affirmatively, from the record, that the Richmond and Danville Railroad Company went into the possession of the Central Railroad and Banking Company of Georgia in June, 1891, taking the same as a "going" concern, with a large amount of coal and other supplies on hand.

Fourth exception. Exceptors except to the sixth finding of fact made by the master, that the coal found in the bins and delivered subsequent to March 4th, 1892, as reported by him, was used by the receivers in conducting the business of said Central Railroad and Banking Company of Georgia, and assigns the same as error, it appearing from the evidence that said coal was used by various other lines than those of the Central Railroad and Banking Company of Georgia, and that only a small portion, as hereinbefore shown, was used by the Central Railroad and Banking Company of Georgia and its receivers, the amounts so used being hereinbefore pointed out by reference to the testimony. Reference is also made to the testimony of the expert, Schooler, page 14 of Master's Report, to the effect that their report only undertook to show the amount of coal unloaded at the places and times shown on their report and not how or by whom it was used.

Fifth exception. Exceptors except to the ninth finding of fact made by the master, that there was 4,018 tons of coal, of the contract value of \$3,817.10, which was found in the bins when the receivers took charge of the road, and the further amount of \$16.85 tons which were unloaded after the appointment of the receiver, and likewise went into the hands of the receiver, and assign said finding as error. Exceptors except also to the finding of the master that said coal was worth ninety-five cents a ton, at the mines, it appearing that said coal was selling at the mines for from eighty to ninety cents a ton, and assign said finding as error. Reference is made to the testimony hereinbefore referred to, and also to the testimony of Thomas Seddon, page 27, and J. R. Ryan, page —, as to price of coal being 80 cents per ton at the mines since the contract of July 13th, 1891.

Sixth exception. Exceptors except to the tenth finding of fact made by the master, that this fuel was necessary to keep the Central Railroad and Banking Company of Georgia a "going" concern, and to conserve its properties and values, and assign said finding as error.

Whereas, said master should have found that this fuel was furnished to the Richmond and Danville Railroad Company and not to the Central Railroad and Banking Company of Georgia, and that said intervenors well knew that said coal was being furnished to the

Richmond and Danville Railroad Company without any obligation on the part of the Central Railroad and Banking Company of Georgia to pay for the same or any part thereof.

Exceptions to Finding of Law.

Seventh exception. Exceptors except to the first finding of law made by said master, wherein said master finds that the intervenor had dealt with the officers and agents of the Richmond and Danville Railroad Company, who were likewise agents and officers of the Central Railroad and Banking Company of Georgia, and say that so much of said finding as finds that said officers and agents of the Richmond and Danville Railroad Company were agents and officers of the Central Railroad and Banking Company of Georgia is error.

Exceptors also except to the finding of said master, that the coal bought by the Richmond and Danville Railroad Company was to be used in the operation of the Central Railroad and Banking Company of Georgia, and assigns said finding as error, the said master failing to distinguish between the operation of a railroad which may be operated by others than the owners thereof, and the operators of a corporation. Exceptors say that the liability to intervenors for supplies furnished to the Richmond and Danville Railroad Company, some of which were used by the Richmond and Danville Railroad Company in the operation of the lines of the Central Railroad and Banking Company of Georgia, was purely a contract liability, the payment of which does not depend upon the question of the duty of the Central Railroad and Banking Company of Georgia towards the public in the operation of its railroads.

Even if there had been a lease of the Central Railroad lines to said Richmond and Danville Railroad Company, there could not be recovery against the Central Railroad and Banking Company of Georgia for such supplies. Exceptors further say that, without any lease, under the operation of the Central R. R. lines by the Richmond & Danville R. R. Co., to the Richmond and Danville Railroad Company, under a void lease, or without any contract, such operation would be contrary to public policy, and the Richmond and Danville Railroad Company could not become the agents of the Central Railroad and Banking Company of Georgia, to operate its lines, and that no person could recover against the Central Railroad and Banking Company on a contract made with the Richmond and Danville Railroad Company for the operation of the Central Railroad lines under such circumstances.

Seventh exception. Exceptors except to the second finding of law made by the master, that the coal used by the Richmond and Danville Railroad Company, in the operation of the Central Railroad lines, should be considered a preferential debt of the Central Railroad and Banking Company of Georgia, within the meaning of the rule in the case of *Fosdick vs. Schall*, 99 U. S. Reports, page 225, and assign said finding as error. Exceptors say that said rule is

not applicable to the case of supplies furnished to a lessee railroad company, so as to make the debt a debt of the lessor company, nor does it apply to the case of supplies furnished to a railroad company operating railroad lines without authority of law.

Eighth exception. Exceptors except to the third finding of law made by the master, that the amount adjudged against the Central Railroad and Banking Company of Georgia, on this intervention, should be paid by H. M. Comer, receiver, and assign said finding as error.

Ninth exception. Exceptors except to the fifth finding of law made by the master, finding judgment against the Central Railroad and Banking Company of Georgia and its receiver for the principal sum of \$14,359.38, and assign said finding as error.

And whereas, said master should have found that, if said intervenor can recover against these exceptors at all, for any of said coal, it could only be for such coal as was stopped by the receiver of the court, *in transitu*, before its delivery to the Richmond and Danville

Railroad Company, at its destination, and unloaded into the
294 Central Railroad bins after the appointment of the receiver, and then only on the idea that the title of the coal had not been completely divested from the intervenor at the time that the receiver took charge, and that the coal, having been used by the receiver, there is an implied assumpsit to pay its value; and as the coal was brought over the lines of the Central railroad and Savannah and Western Railroad, that value would be the value at the mines. But as the coal was actually sold to the Richmond and Danville Railroad Company on time and there was an actual delivery to that company, at the mines, said coal should be looked upon as coal returned by the Richmond and Danville Railroad Company for that borrowed from the Central railroad, and the intervenor should be required to look to the Richmond and Danville Railroad Company, with whom it contracted, for payment.

And, whereas, said master should have found that the Central Railroad and Banking Company of Georgia is not liable at all, but if liable, then the amount of the liability would be shown as follows:

First Case.

If the court should be of the opinion that the Central Railroad and Banking Company of Georgia and its receiver was only liable for coal unloaded after March 4th, 1892, on the Central railroad and lines leased by the Central Railroad and Banking Company of Georgia, and that H. M. Comer, as receiver of the Savannah and Western Railroad Company, and the latter company was liable for the coal similarly unloaded on that line after March 4th, 1892, then the finding of the court would be against the Central Railroad and Banking Company of Georgia and its receivers for 727.20 tons at 90 cents, \$654.48, against the Savannah and Western Railroad Company and its receivers 0 tons, \$0.

Second Case.

If the court should be of the opinion that the Central Railroad and Banking Company of Georgia and the Savannah and Western Railroad Company respectively should be held liable for the proportion of the coal in the bins on those lines on March 4th, 1892, as well as for the cars unloaded after March 4, 1892, then the finding should be as follows :

- Against the Central Railroad and Banking Company of Georgia and its receivers, for 3,312.88 tons at 90 cents, \$2,981.60.
 295 Against the Savannah and Western Railroad Company and its receiver, for 1,423.32 tons at 90 cents, \$1,280.99.

Third Case.

If the court should be of the opinion that the Central Railroad and Banking Company of Georgia and the Savannah and Western Railroad Company should be held liable for the coal used on their lines prior to March 4th, 1892, by the Richmond and Danville Railroad Company, operating said respective lines, as well as for the coal in the bins and the coal unloaded after March 4th, 1892, on said lines, but not liable for the coal used on the Port Royal and Augusta, Port Royal and Western Carolina, the Charlotte, Columbia and Augusta railroads, and for coal shipped by the intervenor but not traced further than its delivery to the Richmond and Danville Railroad Company, then the finding of the court would be as follows :

Against the Central Railroad and Banking Company of Georgia and its receivers, for 7,943.95 tons, at 90 cents, \$7,149.56. Against the Savannah and Western Railroad Company and its receivers, for 3,216.95 tons, at 90 cents, \$2,895.26.

LAWTON & CUNNINGHAM,
 MARION ERWIN,

*Solicitors for C. R. R. and Banking Co. of Ga. and for
 H. M. Comer, Receiver C. R. R. and Banking Co.*

EXHIBIT "A" TO EXCEPTIONS.

Coal shipped by Sloss Iron & Steel Company unloaded prior and including March 4th, 1892, and places at which and railroad lines on which same was unloaded.

On C. R. R. and leased lines.

Savannah....	2,001.30 tons
Augusta	999.20
Macon	2,643.20
Smithville	1,184.95
Americus	31.00
Eufaula, Ala.....	151.30
Albany	78.00
Troy, Ala. (M. & G.).....	52.95

296	Union Springs, Ala. (M. & G.)....	28.85 tons
	Fort Valley, Ga.....	24.55
	Hurtsboro, Ala. (M. & G.).....	21.95

7,216.75 tons

On Savannah & Western R. R.

	Columbus, Ga.....	3,141.55 tons
	Birmingham, Ala.....	30.65
	Griffin, Ga.	22.00
	Lyons	22.75

3,216.95 tons

On Port Royal and Augusta R. R.

	Port Royal, S. C.....	71.65 tons
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On Port Royal and Western Carolina R. R.

	McCormick, S. C.....	208.75 tons
	Spartanburg... ..	225.40

434.15 tons

Georgia Southern & Florida R. R.

	Loaned to it	29.10 tons
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Place of unloading and lines used on and time when used uncertain.

	Unknown....	158.55 tons
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Recapitulation.—Unloaded prior to March 4th, 1892.

On C. R. R. & leased lines.....	7,216.75 tons
Savannah & Western	3,216.95
Port Royal and Augusta....	71.65
Port R. & W. C.....	434.15
Ga. So. & Fla.....	29.10
Unknown ..	158.55

11,127.15 tons

EXHIBIT "B" TO EXCEPTION.

Coal shipped by Sloss Iron & Steel Company unloaded subsequent to March 4th, 1892, and places at which and railroad lines on which same was unloaded.

297 On C. R. R. & leased lines.

	Augusta, Ga.....	172.55 tons
	Macon.....	273.10
	Smithville	134.15
	Americus.....	25.00
	Albany.....	51.85

Troy, Ala. (M. & G.).....	50.05 tons
Savannah, Ga.....	20.50
	<hr/>
	727.20 tons

On Port Royal and Western Carolina.

McCormick, S. C.	20.00
Spartanburg, S. C.....	69.65
	<hr/>
	89.65 tons

Recapitulation.—Unloaded after March 4th, 1892.

On C. R. R. & leased lines.....	727.20
Port Royal & W. C.....	89.65
	<hr/>
	816.85 tons

EXHIBIT "C" TO EXCEPTIONS.

Statement of Coal in Bins on March 4th, 1892.

In bins of C. R. R. and leased lines.

Savannah.....	2,501 tons
Atlanta.....	31
Augusta.....	285
Macon.....	5,836
Smithville.....	250
Sebastopol..	44
	<hr/>
	8,947

In bins of Savannah and Western.

Columbus, Ga.....	2,252 tons
Kellytown, Ala.....	2,673
	<hr/>
	4,925 tons

298 Recapitulation.—Coal in bins March 4th, 1892.

C. R. R. & leased lines.....	8,947 tons
Savannah and Western.....	4,925
	<hr/>
	13,872

If this be apportioned between the four coal companies according to the agreement between them of Nov. 26, 1892 (Master's Report, page 37), the intervenor would have Sloss Iron & Steel Company's proportion of coal in bins:

C. R. and leased lines.....	2,585.68
Savannah and Western.....	1,423.32
	<hr/>
	4,009.00 tons

EXHIBIT "D" TO EXCEPTIONS.
Coal of Sloss Iron and Steel Company.

	Tons unloaded prior to March 4, 1892.	Tons in bins on March 4, 1892.	Tons used from C. R. R. bins at Augusta prior to March 4, 1892.	Tons unloaded subsequent to March 4, 1892.	Tons used on the various roads prior to March 4, 1892.	Tons used by the various roads subsequent to March 4, 1892.	Value at 90 cents per ton of coal and prior to March 4, 1892, by various roads.	Value at 90 cents per ton of coal used subsequent to March 4, 1892, by various roads.
C. R. R.	7,216.75	2,585.68	2,818.32	727.20	1,812.75	3,312.88	\$1,631.48	\$2,981.60
S. & W.	3,216.95	1,423.32	438.70	.....	1,793.63	1,423.32	1,614.27	1,280.99
P. R. & A.	71.65	.....	1,765.79	.....	510.35	.....	459.32	.....
P. R. & W. C.	434.15	.....	613.83	.....	2,199.94	89.65	1,979.95	80.69
C. C. & A. and miscellaneous not C. R. R.	20.10	.....	.....	.....	642.93	.....	578.64	.....
Unaccounted for.	158.55	.....	.....	.....	158.55	.....	152.70	.....
Totals	11,127.15	40.09	.....	816.85	7,118.15	4,825.85	\$6,406.36	\$4,343.28

Endorsement: In United States circuit court, southern district of Georgia. Rowena M. Clarke *et al.* vs. Central Railroad and Banking Company of Georgia *et al.* Bill, etc. Dependent bill. Intervention of Sloss Iron and Steel Company. Exceptions to master's report. Filed August 5th, 1893. L. M. Erwin, deputy clerk. Lawton & Cunningham, Marion Erwin, solicitors for Central Railroad and Banking Company of Georgia and H. M. Comer, receiver.

299 ROWENA M. CLARKE

vs.

CENTRAL RAILROAD AND BANKING
COMPANY *et al.*

} Intervention of the Sloss Iron
and Steel Company.

Now comes the intervenor and excepts to the report of the master as follows:

First Exception.

Intervenor excepts to the find- and conclusion of the master that the receiver of the Central Railroad and Banking Company is not liable to the intervenor for the value of the coal which was on the bins and which was delivered after the receivership, to wit: the full value thereof at said bins and at the places of delivery, which value the master has ascertained from the evidence.

Intervenor shows that the said receiver took the coal on the bins and the coal which arrived after the 4th of March without any contract relative to the same and converted such coal to his use as receiver, and is liable to intervenor for the full market value thereof.

Second Exception.

Intervenor excepts — the supplemental and amended report of the master whereby he abates the amount of the judgment which he rendered against the receiver in his original report by the amount of — for — tons of coal delivered by the Central Railroad and Banking Company of Georgia to the Port Royal and Augusta, Port Royal and Western Carolina, and the Charlotte, Columbia and Augusta railroads.

Intervenor submits that inasmuch as the Central Railroad and Banking Company received said coal as supplies that the debt therefor is one of the current debts of the road in the operation of its business and entitled to preference under the rule of law commonly referred — as the rule in the case of *Fosdick vs.*
300 *Schaw*; and the fact that the Central Railroad and Banking Company used a part of this coal on other lines which it was controlling does not affect the operation of said rule.

HILL, HARRIS & BIRCH,

Solicitors for Intervenor.

Endorsement: United States circuit court, eastern division, southern district of Georgia. Rowena M. Clarke vs. Central Railroad and

Banking Company *et al.* Intervention of the Sloss Iron and Steel Company. Exceptions to master's report filed by intervenor. Filed August 5th, 1893. L. M. Erwin, deputy clerk.

MRS. ROWENA M. CLARKE *et al.*

vs.

CENTRAL RAILROAD AND BANKING COMPANY OF } In Equity.
GEORGIA *et al.*

Bill, dependent bill, etc.

Intervention of Sloss Iron and Steel Company.

Hearing before Special Master W. D. Nottingham, Esquire, at Macon, Ga., March 10th, 1893.

Appearances: For intervenors, W. B. Hill, Esquire, of Hill, Harris & Birch, and Olin Wimberly, Esquire, of Steed and Wimberly.

For receiver of Central Railroad and Banking Company of Georgia: Marion Erwin, Esquire.

For Richmond and Danville Railroad Company: J. R. Lamar, Esquire.

Mr. LAMAR: In this case it is agreed that the same points that have been made heretofore by the Richmond and Danville railroad are to be considered as filed in this intervention likewise.

Mr. HILL: I agree to that for the intervenor.

Mr. LAMAR: It is the matter that has been argued before Judge Speer and considered filed in all the cases. He has reserved his decision on the matter.

Counsel agreed to let the agreement made in the Virginia and Alabama Coal Company intervention in regard to waiving affidavits of C. H. Schooler and W. B. Starke to their reports apply also to this intervention.

301 *Evidence Introduced on Part of Sloss Iron and Steel Company, Intervenor.*

C. H. SCHOOLER, called for intervenor, duly sworn, testified:

Examined by Mr. HILL:

Q. I hand you a report, "coal delivered after March 4th, 1892." State whether that is a true and correct report of the cars of coal shipped by the Sloss Iron and Steel Company and delivered to the receivers of the Central after the 4th of March.

— Yes, sir; this is correct.

Q. I now show you a report backed, "coal up to March 4th, 1892." State what is represented by that report.

A. This shows the number of tons of Sloss Iron and Steel Company's coal unloaded prior to and including March 4th, 1892.

Q. I hand you a report backed, "cars unloaded at date not fixed." State to what that refers.

A. This refers to cars that we were unable to establish the exact unloading date. From the fact that at these points, most of them, the agents did not keep a record—an exact record—of the dates the cars were unloaded, from the fact that it took them two or three days to unload one car because they did not have a bin at those points and they unloaded directly onto the engine, and we had to get the date the car went there loaded and the day it went out empty and then assume that the car was unloaded between those dates.

Q. State where you and Mr. Starke obtained the data from which these reports are made.

A. From the records in the local agent's office at some points and at other points from the coal chute boss's records.

Q. And those records were in what office—in whose charge?

A. The records were at some points in the agent's office and in his charge and at other points were in the coal chute boss's office and charge.

Q. Those agents were agents of the receivers of the Central railroad at the time you made the examinations of the books?

A. Yes, sir.

Q. Were your investigations, and were these reports made after careful and thorough work on your part and Mr. Starke's?

A. Yes, sir.

Q. Here's a report marked "statement of coal on the bins March 4th, 1892," what does that report represent?

302 A. It represents the number of tons on the bins of the Central railroad March 4th, 1892—being 18,426 tons.

Q. At the various places mentioned?

A. Yes, sir; that is on the bins.

Cross-examination.

By Mr. ERWIN:

Q. Where does the Sloss — and Steel Company do business?

A. Birmingham, Alabama.

Q. Are you connected with that?

A. Yes, sir.

Q. What connection have you got with that?

A. I am in the office of the Sloss Iron and Steel Company.

Q. Is that the same as the Virginia and Alabama Coal Company?

A. No, sir.

Q. You worked for both of them?

A. No, sir; I did, though, in this investigation.

Q. Were you connected with either one of these companies at the time any of this coal was sold?

A. I was connected with the Sloss Iron and Steel Company at the time the coal was shipped.

Q. At the time the coal was shipped what connection did you have with that company at that time?

A. I worked in the office.

Q. What position did you hold with them at that time?

A. I was then stenographer and had charge of the coal orders.

Q. All that you undertake to say is that you examined the books in the hands of H. M. Comer, receiver of the Central Railroad and Banking Company of Georgia, which books were kept for the business of the road during the time the Danville had charge of it, covering the business up to March 4th, 1892, and that those cars of coal were shown to have been disposed of in the manner you state in that report.

A. Yes, sir.

Q. And that after March 4th, you examined the books kept by the receiver, and the other reports cover the disposition of the coal in respect to that—that received after March 4th?

A. Well, in making the examination, sometimes a car of coal was traced perhaps a week or ten days before March 4th, and the final tracing would prove that it was unloaded after March 4th.

303 Q. In reference to those points, your reports show that?

A. Yes, sir.

Q. What points did you find the Sloss Iron and Steel Company's coal had been shipped to and unloaded previous to March 4th, 1892?

A. Savannah, Ga.; Augusta, Ga.; Macon, Ga.; Smithville, Ga.; Columbus, Ga.; Birmingham, Ala.; Griffin, Ga.; Americus, Ga.; Port Royal, S. C.; Eufaula, Ala.; Albany, Ga.; Troy, Ala.; Union Springs, Ala.; McCormick, S. C.; Spartanburg, S. C.; Lyons, Ga.; Fort Valley, Ga.; Huntsborough.

Q. Did you make any examination at Augusta to see if any coal unloaded there previous to March 4th had been used by the engines of the Charlotte, Columbia and Augusta railroad, a line operated by the Richmond and Danville railroad and not in the Central system?

A. No, sir.

Q. Or whether any coal unloaded at Augusta had been used by the engines operated on the Port Royal and Augusta?

A. No, sir.

Q. Or any other line than the Central?

A. No, sir.

Q. All your report undertakes to show is how much coal was unloaded at the respective places shown on your reports?

A. Yes, sir; and the dates.

Q. You are not book-keeper for the Sloss Company?

A. No, sir.

Q. And you didn't keep the books?

A. No, sir.

THOMAS SEDDON, called for intervenor, duly sworn, testified:

Examined by Mr. HILL:

Q. What connection have you with the Sloss Iron and Steel Company?

A. I am president.

Q. What was your connection with the company during the time that the shipments were made represented by the account sued on?

A. I was president.

Q. Have you examined carefully and in detail the account sued on, which is attached to the intervention?

A. Yes, sir. They were presented to me by the secretary and treasurer who had charge of the account, and our auditor who keeps them, and went over them with both of them.

Q. State whether or not the account is correct.

A. It is.

Q. Unpaid?

A. Unpaid.

Q. Attached to that account are vouchers or documents which appear to be vouchers for the correctness of the account; from whom did those vouchers emanate?

A. D. D. Curran, who was superintendent at that time of the road from here to Columbus, and the road from Columbus to Birmingham; John W. Hall, treasurer of the Richmond and Danville Railroad Company, and Mr. McIntyre.

Q. Who was he?

A. Comptroller of the Central Railroad and Banking Company of Georgia, at Savannah.

Mr. Hill offered in evidence account attached to intervention, together with "exhibits" attached.

(Objected to by Mr. Erwin, but objections were afterwards withdrawn.)

Q. Under what contract was the coal shipped which is represented by this account?

A. Under a contract made between Mr. Minetree, purchasing agent, and the Virginia and Alabama Coal Company, and the subsequent modification of that contract by Capt. Green.

Q. You refer to the contract between the Virginia and Alabama Coal Company and Mr. Minetree, do you mean the Ryan contract which is attached as an "exhibit" to the intervention of the Virginia and Alabama Coal Company?

A. Yes, sir; that is the conclusion of the various agreements between us—between Ryan and the authorities of the Richmond and Danville.

Q. State what modification was made verbally between the Sloss Iron and Steel Company and Capt. Green in regard to shipments to be made by you.

A. Well, I had been trying to secure that contract myself, and after I found that Mr. Ryan had gotten it I made arrangements with Ryan to allow the Sloss Iron and Steel Company to ship a portion of the coal under that contract, that was to be shipped under that contract, provided I could get Capt. Green to give me an additional price which I was demanding and provided he would agree to that modification. I went to Washington and saw Capt. Green.

Q. Who was he?

A. Capt. Green was general manager of the Richmond and Danville and at that time general manager of the Central railroad. After a good deal of trading, Capt. Green finally agreed to give me

five cents a ton more than the contract price between the company and the Virginia and Alabama on the ground that the haul was longer, fifty miles further from the Virginia and Alabama mines to the Central delivery which the Central would be charged with, and moreover, we thought the quality of the coal better, but he would not agree to change Ryan's contract at all. In other words, I demanded that he should make a contract with me for a specific portion of the business. Now, he declined to do that; he said he had made a contract with Mr. Ryan, but said that he would pay me ninety-five cents instead of ninety he was paying the Virginia and Alabama, for all the coal which Mr. Ryan would order me to ship under that contract, but that he declined to change the contract in any way.

Q. Then ninety-five cents was the contract price of the coal represented in this account sued on?

A. Yes, sir.

Q. What would this coal be worth at the contract price delivered at the various points that have been mentioned by Mr. Schooler and at which it was in fact delivered?

Mr. ERWIN: I object to that question as irrelevant and not forming any basis for a *quantum meruit* to complete an *assumpsit* contract.

Mr. HILL: We are going to contend that the receivers are liable for the value of the coal at the places they got it. It is only on that line that I ask the question.

A. You want me to say what that coal was worth at that time, taking the contract price at the mines as the basis. At Atlanta, coal would have been worth \$2.13 per ton; at Augusta, \$3.38; at Columbus, \$2.13.

Mr. HILL: I know Mr. Seddon has a paper before him covering all those valuations, and if you are willing I will let him put it in evidence as his testimony.

This paper marked "exhibit" was put in evidence as the testimony of the witness, subject, however, to objection of Mr. Erwin above stated.

306 Q. Please give the basis of your calculation with that in as your evidence?

A. In arriving at this basis, I have taken the price at the mines by contract, 95 cents, and then I have taken the railroad rates which were published rates by agreement between all the roads in the Southern Railway and Steamship Association as a basis, and I added the price at the mines 95 cents, and the price to the respective points and three cents a ton for unloading the coal from the cars into the bins. At points which have no published rates, I have figured out the per mile rate per ton to the nearest point at which there was a published rate. I have taken the mileage to the point being figured on and made that rate for that point. It is certainly unfair, because it is lower than the local rate to those points. This is a through mileage rate as basis of calculation.

Q. Then that paper (Exhibit A) before you, on that basis represents what coal would have been worth at the various points stated in that paper for contract price, freight and unloading?

A. Yes, sir.

Q. How much do you charge for unloading?

A. Three cents per ton.

Q. Is that reasonable?

A. In my judgment that is very reasonable. It depends entirely upon the character of the point and the way the coal is hauled. Some cars cost ten cents; they have to be shoveled and when dumped out it costs two cents. I think three cents per ton is a low estimate of the cost of unloading.

Q. Eliminating altogether the idea of contract prices, how would you figure the value of the coal at these different points?

A. Our average price for that year was \$1.02 at the mines, the highest price of any railroad contract was \$1.17, the Central was the lowest contract we had at 95 cents. If you take \$1.02 as a basis, which was the average of the coal sold during that time, you would have to increase that price 7 cents. If you take the highest price you would have to take 95 from 117 and add the difference. But I should think if you figure what was fair average value of the coal, it would be fair to take the average price at the mines of the total product for that year.

Q. By adding 7 cents to the 95, the paper before you would show the value of the coal at these different points?

307 A. The average we got for all the coal we mined and shipped during that year.

Q. You state that Capt. Green was the general manager of the Central Railroad and Banking Company of Georgia as well as of the Richmond and Danville.

Objected to by Mr. Erwin as a leading question.

Q. What was the relations of the two corporations, as you understood them, at the time?

A. I had no official knowledge about it at all. In the first place I had never seen the lease of the road. I knew that everybody knew that the Richmond and Danville road had leased the Central railroad. It was a matter of public notoriety; beyond that, I had no official knowledge. I had no occasion to look into it particularly and consequently I did not do so.

Q. On whose credit was this coal sold, the credit of both or one or either?

A. Sold on the credit of both. Sold on the credit or earning capacity of both systems, as I understood it.

Cross-examination.

Mr. ERWIN:

Q. Mr. Minetree was the man the contract was made with?

A. Yes, sir. The verbal contract. If you will allow me to make a statement. The trading was generally done in these large con-

tracts with the general manager. Every large contract I have made with the Richmond and Danville I have had my talks with Capt. Green and generally with Col. Minetree, and after a basis of trade was arrived at Capt. Minetree would write such a letter as that I have. I have had contracts with the Richmond and Danville for five years and all of them are of that nature.

Q. What Mr. Green are you speaking of?

A. Mr. Green, the general manager of the Richmond and Danville Railroad Company.

Q. Mr. Minetree was purchasing agent of the Richmond and Danville?

A. Yes, sir.

Q. So far as you know, Mr. Minetree never was connected with the Central Railroad of Georgia until after the Danville had commenced to operate it?

308 A. I never heard that he was, until after the lease.

Q. Such money as was remit-ed, from whom did it come?

A. Mr. Hall, treasurer of the Richmond and Danville Railroad Company.

Q. Where is the Sloss Company's mines?

A. We have five group-es of mines on the line of the Georgia Pacific road, west of Birmingham, one at Coalburg, Brookside, Brazil, Caidiff and one at Blossburg.

Q. The Georgia Pacific railroad was being operated by the Richmond and Danville at that time?

A. Yes, sir, that is my recollection.

Q. Then all the coal that came on the line of the Central Railroad of Georgia would come naturally either by way of Birmingham and strike the Central system there or come by way of the Georgia Pacific and strike the Central system at Kramer?

A. And you mean what junction points it would come to?

Q. I mean this, the coal which you shipped and which came to the Georgia Central lines, would naturally come by way of Birmingham or by the other direction on the Georgia Pacific to Kramer where it strikes the Chattanooga, Rome & Columbus and come down to the Central railroad that way?

A. It would naturally go to Birmingham and thence to Columbus over the Columbus and Western.

Q. That is in the Central system?

A. Yes, sir. And to Kramer which is the junction of the Chattanooga, Rome & Columbus, and thence north and south on the Chattanooga, Rome & Columbus, and to Atlanta and thence to the Central Railroad lines running out of Atlanta.

Q. All these freight earnings which would enhance the price of coal after it left the mines would be freight earned over the Central's own lines?

A. No, sir, not as between our mines and any other mines of the Georgia Pacific.

Q. Take for instance, coal shipped from your mine to Macon. If the coal was worth 95 cents at your mines and worth 2.58 here, the

difference between 95 cents and 2.58 is due principally to freight charges on it?

A. The coal is 95 and the freight charges 1.60.

309 Q. The freight charges is chief ingredient in the difference between the price paid at the mines and the price in Macon?

A. Yes, sir.

Q. And those freight charges would have accumulated in the hauling of that coal over the Central Railroad's own lines—the lines belonging to the Central railroad and operated by the Danville?

A. I still do not see. If you will make plain what you are driving at.

Q. How far is it from your mines to Birmingham?

A. From nine to seventeen miles; the furtherest is seventeen and the shortest nine.

Q. How far is it from Birmingham to Macon?

A. I have not got that milage.

Q. How far from Birmingham to Columbus?

A. I could not tell you that. I had a railroad guide that gave all these distances in figuring out these valuations.

Q. It is something over 200 miles from here to Birmingham?

A. Yes, sir; it is 167 from Birmingham to Atlanta and you know what the distance is from Macon to Atlanta.

Q. 103 by the Central railroad. By Columbus, it might be a little nearer or farther?

A. Little further.

Q. If the coal came by way of Birmingham, these freight charges would have been incurred in hauling the freight over this distance from Birmingham to Macon?

A. Yes, sir.

Q. The principal part, outside of the 17 miles, would be incurred in hauling the coal over the lines of railroad belonging to the Central Railroad of Georgia?

A. Yes, sir. The rate from our mines to Birmingham is 25 cents a ton, the total rate to Macon is \$1.60, therefore the Central's proportion would be \$1.60 less 25.

Q. That is the regular charge from your mines to Birmingham?

A. That is the open published rate.

Q. It is the local rate?

A. Yes, sir. I don't know what the percentage is that they divide; I have no method of knowing that. For instance, if we sell coal delivered in Macon the Central gives us a rate from the mines to Macon.

310 Q. Your company, the Sloss Company, did not pay for the freight charges from your mines to Macon and these other points from time to time?

A. No, sir.

Q. Didn't pay for the unloading at the chutes?

A. No, sir.

Q. What position did you hold with the Sloss Company?

A. I am president of the company.

Q. You are not book-keeper?

A. No, sir.

Q. It is not in the line of your immediate duties to check out the cars shipped?

A. No, sir.

Q. Or keep books?

A. No, sir.

Q. You cannot testify yourself then as to the correctness of each of these individual items in this account?

A. No, but I can testify—I think I can properly testify—to the correctness of the account because the accounts were placed before me every month. I supervised them every month with the auditor and secretary and treasurer.

Q. You mean copies of accounts furnished you, or statement?

A. Statement—and full statements of all accounts that are bad or doubtful. I have gone over that account with them, I suppose, fifty times.

Q. This copy is from your books?

A. Yes, sir; it is a statement from our books.

Q. Made by your book-keeper?

A. Yes, sir.

Q. And the correctness of it depends upon the correctness of your book-keeper?

A. Of course.

Q. Whether these charges are exactly right depends upon whether the man that made this account from your book did it right or not?

A. Of course, whether the books are correctly kept. They are correctly kept or they would not balance.

Examined by Mr. LAMAR:

Q. Did you ever see the letter that contained the terms of the contract with Mr. Ryan and the Virginia and Alabama Coal Company?

311 A. I saw a copy of it in Colonel Minetree's letter book in Washington.

Q. Look at that and see if it is a copy of the contract made with the Virginia and Alabama Coal Company. (Copy attached to record in Virginia and Alabama Coal Company's intervention.)

A. I read this over carefully last night, and to the best of my recollection that is a correct copy. It is literally impossible for me to say that a letter that I had not seen for twelve months was an exact copy. That is the exact form he writes those letters.

Mr. LAMAR: We have agreed that this is a correct copy of the letter; I simply wanted him to refresh his memory.

Q. You say that when you went to see Mr. Green he agreed that you might furnish coal under the terms of this contract, except that on account of the fact that your mines were fifty miles nearer the point of distribution, he would allow you five cents a ton more?

A. Yes, sir; he allowed five cents a ton more. I had refused to sell that for less than \$1.10 because I didn't think Captain Green could buy it for less. Afterward Ryan made a contract at 90 cents and I wanted a part of it, but I thought I was entitled to 15 cents more than Ryan's price because there was fifty miles involved. I considered our coal a better quality, and I worked very hard to make Captain Green pay me the 15 cents, but he refused to pay any difference; he finally did agree to pay five cents, but declined to make any separate contract with me, simply agreeing that they would pay me 95 cents for all coal that Mr. Ryan chose to give me orders to ship to the Central railroad.

Q. All this coal that you sue for in this intervention is coal that was shipped by order of Mr. Ryan?

A. Yes, sir.

Q. And Mr. Green refused to make any contract with you?

A. Yes, sir.

Q. And the coal was shipped under the terms of this contract?

A. Yes, sir.

Q. This their written contract?

A. Yes, sir.

Examined by Mr. ERWIN:

Q. What was said in reference to some kind of an agreement that existed between the coal miners in reference to not selling the Richmond and Danville itself at the time that you had these negotiations?

312 A. Well, now, Mr. Erwin, if that is not specially important to you in your case, I would rather not answer that question for this simple reason, that while I and the Sloss Iron and Steel Company have nothing we are ashamed to talk about, it means the giving away of the private business of that company and other companies, and it would be violating the comities on my part to do it. If it is necessary for you to have the question answered, and the court is unwilling to excuse me, I will answer it with a great deal of pleasure. If it is not very necessary for you, I would prefer that you would not ask it.

Q. I would not ask the question if I did not think it was necessary; I state that I think it is necessary: the written contract which you have purports to be in the name of the Central Railroad and Banking Company of Georgia, and I want to get at the facts as to how it came to be and in what way it was made, it is necessary for me to ask the question.

A. The Tennessee Coal and Iron Company, the Sloss Iron and Steel Company, the Debardeleben Coal and Iron Company, the Cahawba Mining Company mine, I should say, seventy-five or eighty-five per cent. of the coal mined in that district. Now the Cahawba is on the Louisville and Nashville and Alabama Great Southern, and their natural territory is the southwest; the Sloss Iron and Steel Company is on the line of the Georgia Pacific and their natural territory is to the east and west on the line of the Georgia Pacific

and to the southeast; the Deba-deleben is naturally on the Central and Georgia Pacific. Those companies got together—representatives did—and agreed that we would not sell any coal except in our natural district; that each was to hold the contract he had for the previous year and none of the others would bid against them. My agreement was with the smaller mines on the Georgia Pacific that if I bid on the Central railroad, and I bid on the Richmond and Danville, that I was to give them a percentage of those shipments so that they would have some coal to ship and would prevent the ruinous competition which had previously existed. Now, I had an agreement with Mr. Ryan that he should not make a bid to the Richmond and Danville Railroad Company. Relying on that I put up my price on the Central contract which I had had the previous year, and on the Richmond and Danville Company.

Q. What was the difference?

313 A. The Richmond and Danville contract was \$1.05. I advanced the price to \$1.12. The Central's was 97½ cents and I advanced to \$1.10. Captain Green said he would not pay it. I went to Mr. Ryan and told him that I did not think I had been properly treated in that matter, that he had made a contract with the Richmond and Danville, when he said he would not. He said he hadn't made it, "I refused positively to do it" and says "I made the contract with the Central Railroad Company," and he said further that Captain Green and Captain Minetree said they had authority to contract for that company, and you did not consider me in your percentage in the Central Railroad contract and you allowed me a percentage on the Richmond and Danville contract." Captain Green gained by that for the Central railroad twenty cents a ton on his coal. Fortunately, Ryan's mine and the other mines on the road did not have a sufficient output to furnish the Richmond and Danville Company and the Central Company both, and his contract expired on the 1st of August as against the Central's on the 1st of July, and on the 1st of August I made Captain Green pay me a dollar. I refused to sell him for less than \$1.10, but in consideration of the fact that he made the contract for two years, I came down to \$1.

Q. Were these mines in that district sufficiently powerful with that combination to control the prices on these railroad systems? Were they so situated in reference to those railroads, in locations that they were enabled to raise by combining the price and force the railroad to pay those prices?

A. We thought so or we would not have tried it.

Q. It succeeded, except in this case, because of the failure to get the Central?

A. As a matter of fact that started the break and we had the worst competition since then we ever had before. The price is lower today than ever before.

Q. What is it today?

A. Eighty cents to a dollar. The highest contract we have is a dollar.

Q. Was the price of coal varying during the year 1892?

A. Our business is a large steam business on which we make contracts and they are generally made in the spring and summer months and after they are made there is very little varying. We use 1,350 tons a day at our works and the balance is sold in
314 railroad contracts and contracts like that of the Bibb County Manufacturing Company, etc. Very little varying after a contract is made.

Q. You speak of the average price for the year as if there was a difference in prices—it does vary from time to time.

A. Not so much variation as the ability to get more out of one man by a contract than another.

Q. This coal belt covered by those mines are the coal mines which supply this section of the country with coal, are they not?

A. All except the coal that comes from East Tennessee. A good deal of coal comes from East Tennessee.

Q. The distance from this section of the country is comparatively so much greater as to make the rate much higher.

A. Not so much difference in rate but competition is very sharp. For instance, the Georgia road buys its coal in Tennessee. I have been furnishing them, but last year the East Tennessee got it away from me.

Q. If the Tennessee mines were in operation in 1892 when you made this combination in Alabama, how was it that this road did not go to Tennessee for coal that year?

A. Because the Tennessee Coal and Iron Company is probably the largest producers in Tennessee.

Q. And they were in it too?

A. I have just stated that; yes, sir.

By Mr. LAMAR:

Q. These accounts are made out against the Central Railroad and Banking Company; were the entries made on your ledger in that way?

A. That is my understanding. I am not prepared to testify—I try to be accurate. I have never looked on my ledger to see how the account stands on my ledger.

Q. Is it a fair inference that the accounts were taken from it correctly?

A. Yes, sir.

By Mr. ERWIN:

Q. You don't know that?

A. No, sir.

The master stated that he would on the 20th instant assign the further hearing of this case for the 24th.

315 Counsel for the Sloss Iron and Steel Company offered in evidence contract of November 26th, 1892, between the Virginia and Alabama Coal Company, the Sloss Iron and Steel Company and the Corona Coal and Coke Company and Little Warrior

Coal Company in reference to the prorating coal in bins of the Central railroad on March 4th, 1892. It is admitted by counsel for H. M. Comer, receiver, that the contract between said coal companies was made and that each of said companies is suing by intervention in the Rowena M. Clarke case to recover the respective amounts in said contract mentioned, for coal alleged to have been furnished the Richmond and Danville Railroad Company operating the Central Railroad of Georgia. Further than this no admissions are made.

Counsel for the said receiver objects to the admissibility in evidence of said contract as being irrelevant and incompetent evidence, because it is not shown that such a prorating would be legal and equitable, or that the coal in the bins was either in whole or any part of the coal alleged to have been sold and delivered, or if a part of the same that such ratio would represent the coal of the respective parties, or that they had any liens for the same or any part thereof.

(Dictated to stenographer by Mr. Erwin in the presence of Mr. Hill, just after the completion of the foregoing evidence.)

Virginia and Alabama Coal Company and the Sloss Iron and Steel Company.

C. H. SCHOOLER, recalled by plaintiff, testified :

In my investigation I made in behalf of the interventions of the Sloss Iron and Steel Company and the Virginia and Alabama Coal Company, I looked generally through the records of the Central Railroad and Banking Company of Georgia. Besides our companies that they dealt with I found two (2) others on their books; one was the Little Warrior and the other was Corona Coal and Coke Company. These latter two were the two besides ours that the company dealt with.

The chief office of the Corona, I think, is in Jasper, Alabama. I don't know where the *the* chief office of the Little Warrior Coal Company is; I think, though, it is an Alabama company.

Cross-examined by Mr. ERWIN :

316 Since you mention it, I think I saw the name of the Tennessee Coal and Coke Company also on the books of the Central; there may have been other Tennessee mining companies selling coal to the Central, but I only recollect the one just mentioned, the Tennessee Coal and Coke Company.

The books that I examined were at the time in the hands of Mr. Comer, receiver, and were the same books that were kept by the Richmond and Danville during the time of its operation of the lines of the Central Railroad and Banking Company of Georgia.

EXHIBIT "A."

*Memorandum for Testimony before W. D. Nottingham, Special Master,
March 10th, 1893, as to Value of Coal on Hand March 4th, 1892.*

Evidence of Mr. SEDDON:

According to our contract, we shipped the Central Railroad coal to the following points. Price of coal at mines, 95 cents.

Atlanta,	95 cents,	1.15 fr't,	and	03 cents	unloading	....	\$2 13
Augusta,	95 "	2.40 "	"	03 "	"	....	3 38
Columbus,	95 "	1.15 "	"	03 "	"	....	2 13
Eufaula,	95 "	1.71 "	"	03 "	"	....	2 69
Griffin,	95 "	1.55 "	"	03 "	"	....	2 53
Macon,	95 "	1.60 "	"	03 "	"	....	2 58
Opelika,	95 "	1.15 "	"	03 "	"	....	2 13
Savannah,	95 "	2.25 "	"	03 "	"	....	3 23
Americus,	95 "	1.80 "	"	03 "	"	....	2 78
Birmingham,	95 "	25 "	"	03 "	"	....	1 23
Albany,	95 "	1.80 "	"	03 "	"	....	2 78
Ft. Valley,	95 "	15 "	"	03 "	"	....	3 13
Smithville,	95 "	1.80 "	"	03 "	"	....	2 78

No rate is published in circular R. C., No. 4, series 1891-1892, of the Southern Railway — Steamship Association to this point, consequently have taken the rate to Albany as basis.

Kellyton, 95 cents, 55 fr't, and 03 cents unloading. \$1 53

No rate is published in above-named circular to Kellyton, consequently have taken the rate per ton per mile to Columbus, which is 00.732 per ton per mile.

Sebastopol, 95 cents, 2.15 fr't, and 03 cents unloading. \$3 13

317 No rate is published in above-named circular to this point, consequently have taken the rate to Macon as basis, which is 00.6 per ton per mile, distance from Macon to Sebastopol 92 miles, 55 cents, which add- to published rate to Macon (\$1.60), makes total rate \$2.14.

Port Royal, 95 cents, 2.25 fr't, and 03 cents unloading. \$3 23

No rate published in above-named circular to Port Royal, but the rate given by same circular from Jellico, Tenn., which is \$2.64, and from Blocton, Gurnee and Aldrich, Ala., \$2.54, therefore the Savannah rate of \$2.25 is certainly low for this point.

Troy, 95 cents, 1.77 fr't, and 03 cents unloading. \$2 75

No rate published in above-named circular to Troy; freight to Troy is computed on mileage to Troy, basis of .00732, which is the rate per mileage to Columbus, the nearest point.

Union Sp'gs, 95 cents, 1.55 fr't, and 03 cents unloading..... \$2 53

No rate published in above-named circular to Union Springs. Freight to this point is computed on mileage to Union Springs basis of .00732, which is the per mileage rate to Columbus, the nearest point.

McCormick, 95 cents, 2.71 fr't, and 03 cents unloading..... 3 69

No rate published in above-named circular to McCormick; freight to this point is computed on mileage to McCormick from Augusta, which is .007 per ton per mile. This amount is added to published rate to Augusta, making total freight rate \$3.71.

Spartanburg, 95 cents, 1.95 fr't, and 03 cents unloading..... \$2 93

No rate published in above-named circular to Spartanburg from Alabama mines, but Richmond & Danville rate sheet No. 1, effective October 5th, 1892, makes rate of \$2.00, and the above-named circular shows rate from Tennessee mines \$1.95, consequently I have taken this rate as a fair one.

Lyons, 95 cents, 2.25 fr't, and 03 cents unloading..... \$3 23

No rate published in above-named circular, but as the Savannah rate is less than to any interior points, it is certainly fair to allow the Savannah rate.

Hurtsboro, 95 cents at mines, 1.53 fr't, and 03 cents unloading..\$2 51

318 No rate is published in above-named circular, but as it is a greater distance than Union Springs, it is certainly fair to allow the Union Springs rate.

In estimating the value of coal at the several points, I have taken the contract price at mines, and the rates of freight which existed at the time as are shown by the circular of "Southern Railway and Steamship Association" R. C. No. 4 series, 1891-1892, and have added 03 cents per ton for transferring the coal from the cars into the bins, which is a very low price.

Memorandum by the Clerk.

By agreement of the parties the evidence taken on the interventions of the Virginia and Alabama Coal Company and of the Sloss Iron and Steel Company was considered as taken on each intervention interchangeably, and therefore such of the agreements of counsel and such of the evidence as is already embodied in this transcript under the Virginia and Alabama Coal Company's intervention is omitted here to save repetition.

Expert Report of C. H. Schooler and W. B. Starke on Part Sloss Iron and Steel Co.

Report No. 1.

Statement showing number of tons of coal unloaded prior to and including March 4th, 1892, same being made up from the attached sheets, which have been correctly certified to Central Railroad & Banking Company of Georgia, at places named by Sloss Iron & Steel Company.

Place unloaded.	No. of tons.
Savannah, Ga.	2,001.30
Augusta, Ga.	999.20
Macon, Ga.	2,643.20
Smithville, Ga.	1,184.95
Columbus, Ga.	3,170.65
Birmingham, Ala.	30.65
Griffin, Ga.	22.00
319 Amerieus, Ga.	31.00
Port Royal, S. C.	71.65
Eufaula, Ala.	151.30
Albany, Ga.	78.00
Troy, Ala.	52.95
Union Springs, Ala.	28.35
McCormick, S. C.	208.75
Spartanburg, S. C.	225.40
Ft. Valley, Ga.	24.55
Huntsboro.	21.95
Lyons.	22.75
Total.	10,968.60

320 Cars unloaded at Savannah prior to and including March 4th, 1892. Central Railroad and Banking Company of Georgia; Sloss Iron and Steel Company.

Date shipped.	Initial.	Number.	Weight.	Date unloaded.
1892.				1892.
Jan. 30.	G. P.	18,149	56,100	March 19
12.	C. of G.	20,310	49,500	Jan. 16
Feb. 5.	C. of G.	13,260	54,700	Feb. 11
5.	G. P.	21,119	49,000	Feb. 12
5.	S. and G.	16,060	43,300	Feb. 12
5.	C. of G.	13,083	52,000	Feb. 12
5.	G. P.	21,518	58,000	Feb. 12
5.	G. P.	20,857	55,700	Feb. 16
5.	G. P.	40,985	54,600	Feb. 12
5.	S. and W.	16,029	45,400	Feb. 12
6.	G. P.	20,569	36,000	Feb. 9

Date shipped.	Initial.	Number.	Weight.	Date unloaded.
1892.				1892.
Feb. 6.	S. and W.	5,121	50,300	March 4
	G. P.	21,143	56,800	Feb. 11
	C. of G.	13,135	57,700	Feb. 11
	G. P.	21,004	57,000	Feb. 9
321	S. G. P.	21,432	59,100	Feb. 10
	S. C. of G.	20,773	62,600	Feb. 16
	S. C. of G.	13,025	52,000	Feb. 17
	S. V and A.	13,173	50,500	Feb. 17
	G. P.	738	46,500	Jan. 15
	G. P.	21,123	55,000	Feb. 15
	W. N. C.	118	37,900	Feb. 15
	S. and W.	16,069	49,000	Feb. 13
	C. of G.	13,038	57,000	Feb. 15
	C. of G.	12,048	42,600	Feb. 19
	G. P.	20,565	37,000	Feb. 13
	R. and D.	14,512	42,000	Feb. 13
	S. and W.	5,294	51,000	Feb. 16
	G. P.	21,163	51,600	Feb. 22
	C. of G.	20,476	41,600	Feb. 17
	G. P.	13,262	62,500	Feb. 15
	S. and W.	21,546	61,500	Feb. 15
	S. and W.	5,292	54,400	Feb. 17
	C. of G.	13,278	57,600	Feb. 17
	C. of G.	13,240	56,000	Feb. 18
322	G. P.	21,031	58,200	Feb. 17
	G. P.	20,741	66,000	Feb. 22
	S. and W.	5,210	53,000	Feb. 16
	R. and D.	15,271	48,800	Feb. 15
	G. P.	21,159	55,000	Feb. 22
	G. P.	20,692	41,800	Feb. 18
	G. P.	20,910	51,200	Feb. 22
	S. and W.	5,044	50,800	Feb. 18
	C. of G.	13,274	55,700	Feb. 18
	S. and W.	16,096	52,000	Feb. 16
	G. P.	20,890	60,000	Feb. 18
	G. P.	21,407	52,400	Feb. 18
	S. and W.	5,275	54,500	Feb. 17
	G. P.	21,475	54,600	Feb. 17
	G. P.	21,578	60,100	Feb. 19
	G. P.	20,884	56,700	Feb. 23
	W. O. and W.	502	41,600	Feb. 22
	R. and D.	15,380	47,400	
	R. and D.	15,390	47,900	Feb. 26

323 Unloaded at Savannah prior to and including March 4th.
Sheet 2.

Date shipped.	Initial.	Number.	Weight.	Date unloaded.
1892.				1892.
Feb. 16.	V. & A.....	708	50,400	Feb. 25
16.	E. T. V. & G.....	21,234	47,800	Feb. 23
16.	G. P.....	20,862	62,400	Feb. 22
16.	G. P.	20,528	39,400	Feb. 23
16.	G. P.....	21,227	50,400	Feb. 23
17.	R. & D.....	15,348	46,000	Feb. 24
17.	G. P.....	20,964	50,700	Feb. 24
17.	G. P.....	20,698	39,400	Feb. 24
17.	C. of G.....	13,088	60,200	Feb. 24
22.	G. P.....	20,675	43,600	Feb. 25
22.	G. P.....	21,034	52,300	Mar. 4
22.	G. P.....	21,221	59,500	Feb. 27
22.	C. of G.....	13,107	56,200	Feb. 27
22.	S. & W.....	20,527	44,300	Feb. 27
22.	S. & W.....	16,049	52,300	Feb. 27
23.	S. & W.....	16,096	49,200	Feb. 29
324 23.	R. & D.....	14,346	47,200	Mar. 1
23.	S. & W.....	16,040	51,500	Mar. 1
23.	G. P.....	21,131	52,100	Mar. 1
24.	R. & D.....	15,350	44,700	Mar. 3
24.	G. P.....	20,280	43,500	Mar. 3
24.	G. P.....	21,212	50,800	Feb. 29
24.	S. & W.....	16,033	47,000	Feb. 29
24.	G. P.....	21,431	56,500	Feb. 29
			<hr/> 4,002,600	Mar. 1
			<hr/> 2,001.30 tons.	

This is to certify that the above checkings, and the checkings on the sheet above attached, are correct, as taken from the records of the Central Railroad and Banking Company of Georgia.

The tracings were made personally by the undersigned.

W. B. STARKE,

Chief Clerk Statistical Dept R. & D. R. R. Co.

C. H. SCHOOLER,

Representing Sloss Iron & Steel Co.

325 Cars unloaded at Augusta, Ga., prior to and including March 4th, 1892. Central Railroad and Banking Company of Georgia; Sloss Iron and Steel Company.

Date shipped, 1892.	Initial.	Number.	Weight.	Date unloaded, 1892.
Jan. 7.	C. of G.	13,000	56,800	Feb. 1
8.	C. of G.	13,213	53,700	Feb. 18
8.	C. of G.	13,001	50,200	Jan. 13
8.	G. P.	20,609	39,000	Jan. 18
20.	W. N. C.	15,800	36,000	Jan. 15
20.	R. & D.	15,360	50,800	Jan. 25
20.	R. & D.	15,294	49,000	Jan. 25
20.	C. of G.	13,166	55,000	Feb. 16
20.	G. P.	20,508	36,800	Feb. 2
22.	G. P.	20,598	41,600	Jan. 29
22.	S. & W.	51,480	50,100	Jan. 28
22.	V. & A.	78,900	45,100	Feb. 5
22.	S. & W.	52,600	49,800	Jan. 27
22.	G. P.	20,776	53,900	Jan. 27
22.	G. P.	21,293	53,200	Feb. 13
22.	V. & A.	52,630	47,300	Feb. 4
23.	S. & W.	79,200	50,000	Feb. 18
23.	C. of G.	13,112	53,700	Feb. 4
25.	G. P.	21,495	59,300	Feb. 3
20.	G. P.	20,770	61,000	Feb. 4
25.	G. P.	21,150	56,300	Feb. 2
26.	R. & D.	14,534	34,400	Feb. 2
26.	R. & D.	14,538	41,500	Feb. 2
26.	V. & A.	79,300	47,000	Feb. 2
Feb. 15.	C. of G.	13,051	51,800	Feb. 24
16.	I. C. E. & C. A.	24,810	52,100	Feb. 24
7.	G. P.	21,192	55,100	Feb. 22
7.	G. P.	20,625	38,500	Feb. 22
17.	S. & W.	16,054	52,400	Feb. 20
17.	V. & A.	72,300	49,000	Feb. 20
18.	G. P.	20,536	46,000	Feb. 25
22.	S. & W.	52,100	59,500	Feb. 29
23.	W. N. C.	16,400	37,700	Feb. 27
326 23.	C. of G.	13,045	58,800	March 1
23.	G. P.	21,613	62,000	March 1
24.	G. P.	20,595	41,000	March 2
25.	G. P.	20,928	62,400	March 3
25.	G. P.	21,282	51,000	March 3
22.	S. & W.	16,060	50,200	March 4
22.	S. & W.	51,830	59,400	March 4

1,998,400

999,20 tons.

This is to certify that the above checkings are correct, as taken from the records of the Central R. R. & Banking Co. of Georgia.

The tracings were made personally by the undersigned.

W. B. STARKE,

Chief Clerk Statistical Dep't R. & D. R. R. Co.

C. H. SCHOOLER,

Representing Sloss Iron & Steel Co.

327 Cars unloaded at Macon, Ga., prior to and including March 4, 1892. Central Railroad and Banking Company of Georgia; Sloss Iron and Steel Company.

Date shipped.	Initial.	Number.	Weight.	Date unloaded.
1892.				1892.
Feb. 2.	W. M. C.....	10,900	37,700	Feb. 9
2.	R. & D.....	14,556	38,500	Feb. 9
2.	C. of G.....	13,268	51,100	Feb. 9
2.	M. & C.....	22,983	42,800	Feb. —
2.	G. P.....	21,561	51,100	Feb. 11
2.	G. P.....	21,023	49,900	Feb. 9
3.	G. P.....	21,509	61,200	Feb. 25
3.	G. P.....	21,184	59,000	Mar. 1
3.	C. of G.....	13,226	56,300	Feb. 11
3.	G. P.....	21,049	48,300	Feb. 9
3.	C. of G.....	13,193	52,000	Feb. 10
3.	C. of G.....	12,091	40,400	Feb. 10
3.	G. P.....	18,743	47,600	Feb. 7
3.	G. P.....	21,457	55,300	Feb. 17
3.	G. P.....	21,053	59,400	Feb. 25
4.	C. of G.....	12,026	45,500	Feb. 27
4.	S. & W.....	51,840	54,800	Feb. 26
4.	G. P.....	21,311	61,600	Feb. 27
6.	G. P.....	20,478	44,600	Feb. 11
6.	G. P.....	21,404	57,400	Feb. 11
6.	R. & D.....	20,620	37,300	Feb. 10
6.	S. & W.....	15,380	39,200	Feb. 10
8.	G. P.....	52,270	58,600	Feb. 13
9.	R. & D.....	18,713	56,900	Feb. 19
9.	R. & D.....	15,221	41,700	Feb. 19
9.	R. & D.....	15,377	39,800	Feb. 19
9.	G. P.....	21,012	50,600	Feb. 18
9.	G. P.....	20,916	49,600	Feb. 16
9.	R. & D.....	14,585	42,400	Feb. 12
9.	G. P.....	20,580	36,000	Feb. 13
9.	S. & W.....	16,083	54,000	Feb. 22
9.	G. P.....	20,303	41,000	Feb. 22
15.	S. & W.....	52,080	55,300	Feb. 24
328 15.	S. & W.....	52,260	58,900	Feb. 25
15.	G. P.....	20,600	39,500	Feb. 25

Date shipped.	Initial.	Number.	Weight.	Date unloaded.
1892.				1892.
Feb. 18.	G. P.	21,256	56,200	Feb. 24
18.	W. N. C.	17,300	41,600	Mar. —
18.	G. P.	18,568	61,400	Feb. 21
18.	C. of G.	12,021	39,800	Feb. 26
18.	R. & D.	15,332	45,200	Feb. 29
18.	C. of G.	13,004	57,600	Mar. 1
22.	V. & A.	78,500	48,700	Mar. 1
22.	S. & W.	16,067	49,000	Jan. 7
Jan. 5.	G. P.	18,347	57,600	Jan. 7
5.	G. P.	18,309	61,400	Jan. 7
5.	G. P.	18,125	53,200	Feb. 6
5.	G. P.	18,142	55,400	Feb. 6
7.	G. P.	18,029	58,500	Feb. 6
7.	G. P.	18,614	58,200	Feb. 8
7.	G. P.	18,510	49,800	Feb. 4
7.	G. P.	18,164	57,400	Feb. 4
7.	G. P.	18,304	59,000	Feb. 4
7.	G. P.	18,225	57,800	Jan. 12
7.	G. P.	18,039	61,200	Feb. 6
7.	G. P.	18,296	58,200	Jan. 16
7.	G. P.	18,259	58,900	Feb. 8
7.	G. P.	18,419	59,000	
7.	G. P.	18,585	62,200	
Forward.....			2,985,600	

329 Unloaded at Macon prior to and including March 4th continued. Sheet 2.

Date shipped.	Initial.	Number.	Weight.	Date unloaded.
1892.				1892.
Forward from sheet No. 1. ...			2,485,600	
Jan. 8.	G. P.	21,587	60,900	Jan. 13
8.	G. P.	21,572	54,200	Feb. 2
12.	R. & D.	15,260	48,500	Feb. 3
12.	S. & W.	51,240	52,400	Feb. 2
12.	G. P.	21,498	61,500	Feb. 2
12.	G. P.	21,478	60,900	Jan. 28
14.	S. & W.	52,750	51,500	Jan. 28
14.	G. P.	21,603	56,500	Jan. 28
14.	G. P.	21,149	49,700	Jan. 23
14.	R. & D.	15,337	37,800	Jan. 20
15.	G. P.	18,615	60,100	Jan. 16
15.	G. P.	18,040	58,600	Feb. 16
15.	G. P.	18,451	56,700	Feb. 16
15.	G. P.	18,504	47,400	Feb. 16
15.	G. P.	18,077	60,300	Jan. 22

Date shipped.	Initial.	Number.	Weight.	Date unloaded.
1892.				1892.
Jan. 16.	V. & A.....	78,200	49,800	Jan. 21
	16. C. of G.....	13,229	56,000	Jan. 21
	16. S. & W.....	52,840	50,200	Jan. 21
	16. G. P.....	20,963	49,200	Jan. 22
	16. G. P.....	20,941	48,800	Feb. 18
Feb. 15.	V. & A.....	78,000	46,800	Feb. 20
	15. G. P.....	20,714	55,100	Feb. 18
	15. C. of G.....	13,110	52,400	Mar. 4
	16. G. P.....	18,187	60,100	Mar. 4
	16. G. P.....	18,408	59,000	Mar. 4
	16. G. P.....	18,622	62,600	Feb. 22
	17. G. P.....	20,739	49,400	Feb. 20
	17. G. P.....	21,566	59,600	Feb. 20
	17. G. P.....	21,424	58,800	Feb. 22
	17. G. P.....	20,561	39,500	Feb. 22
	17. G. P.....	20,635	39,800	Feb. 23
	18. W. N. C.....	17,400	37,200	Feb. 24
	18. S. & W.....	20,516	41,500	Feb. 29
330	18. G. P.....	20,933	49,900	Feb. 29
	18. R. & D.....	15,293	44,400	Feb. 27
	18. G. P.....	20,985	53,000	Feb. 29
	18. C. of G.....	13,294	52,900	Mar. 1
	22. G. P.....	20,952	50,900	Mar. 2
	22. S. & W.....	20,540	47,400	Mar. 2
	22. C. of G.....	13,190	59,100	Mar. 2
	22. C. of G.....	13,148	59,600	Mar. 1
	22. G. P.....	20,953	49,800	Mar. 1
	23. C. of G.....	13,235	60,000	Mar. 1
	24. R. & D.....	15,258	41,000	Feb. 29
Total pounds.....			5,286,400	
			2,643.20 tons.	

This is to certify that the above checkings, and the checkings on the sheet above attached, are correct, as taken from the records of the Central Railroad and Banking Company of Georgia.

The tracings were made personally by the undersigned.

W. B. STARKE,

Chief Clerk Statistical Dept R. & D. R. R. Co.

C. H. SCHOOLER,

Representing Sloss Iron and Steel Company.

331 Cars unloaded at Smithville, Ga., prior to and including March 4, 1892. Central Railroad and Banking Company of Georgia; Sloss Iron and Steel Company.

Date shipped.		Initial.	Number.	Weight.	Date unloaded.
1892.					1892.
Feb.	2.	G. P.	18,071	58,600	Feb. 13
	2.	G. P.	18,158	58,800	Feb. 13
	3.	G. P.	18,106	55,900	Feb. 7
	3.	G. P.	18,269	55,400	Feb. 7
	3.	G. P.	18,439	51,000	Feb. 7
	3.	G. P.	18,178	53,000	Feb. 10
	4.	G. P.	18,571	59,200	March 4
	5.	G. P.	18,661	53,000	Feb. 13
	5.	G. P.	18,659	57,500	Feb. 11
	5.	G. P.	18,701	55,000	Feb. 11
	5.	G. P.	18,141	59,200	Feb. 11
	5.	G. P.	18,399	54,800	Feb. 11
	5.	G. P.	18,064	58,300	Feb. 13
	6.	G. P.	21,230	61,900	Feb. 15
	6.	G. P.	20,632	39,600	Feb. 15
	8.	G. P.	18,266	53,800	Feb. 12
	8.	G. P.	20,425	43,800	Feb. 12
	23.	G. P.	18,496	59,000	Feb. 29
	23.	G. P.	18,312	59,000	Feb. 29
	23.	G. P.	18,378	52,000	March 4
	23.	G. P.	18,440	59,400	March 4
	23.	G. P.	18,552	59,200	March 4
	23.	G. P.	18,571	59,800	March 4
	24.	G. P.	18,196	59,200	March 4
Jan.	5.	G. P.	18,121	59,600	March 4
	5.	G. P.	18,123	57,200	Feb. 1-13
	6.	G. P.	18,330	59,700	Jan. 14-20
	6.	G. P.	18,269	53,400	Jan. 14-20
	6.	G. P.	18,434	59,000	Jan. 14-21
	6.	G. P.	18,312	57,700	Jan. 14-20
	6.	G. P.	18,106	57,200	Jan. 14-20
	6.	G. P.	18,323	58,200	Jan. 18-21
332	6.	G. P.	18,134	58,000	Jan. 18-21
	7.	G. P.	18,320	60,000	Jan. 12
	7.	G. P.	18,552	58,400	Jan. 18
	15.	G. P.	18,652	55,500	Jan. 26
	15.	G. P.	18,352	56,400	Jan. 25
	16.	G. P.	18,592	61,200	Jan. 25
Feb.	22.	G. P.	20,759	49,800	March 4
	23.	G. P.	18,207	58,300	Feb. 29
	23.	G. P.	18,168	59,400	Feb. 29
Jan.	30.	G. P.	18,468	54,500	Feb. 13

2,369,900

1,184.95 tons.

This is to certify that the above checkings are correct as taken from the records of the Central Railroad and Banking Company of Georgia.

The tracings were made personally by the undersigned.

W. B. STARKE,

Chief Clerk Statistical Dep't R. & D. R. R. Co.

C. H. SCHOOLER,

Representing Sloss Iron and Steel Co.

333 Cars unloaded at Columbus, Ga., prior to and including March 4th, 1892. Central Railroad and Banking Company of Georgia; Sloss Iron and Steel Company.

Date shipped. 1892.	Initial.	Number.	Weight.	Date unloaded. 1892.
Feb. 3.	G. P.	18,239	51,600	Feb. 8
3.	G. P.	18,105	55,700	Feb. 8
4.	G. P.	18,523	50,800	Feb. 8
5.	G. P.	18,228	55,300	Feb. 11
5.	G. P.	18,136	55,000	Feb. 11
5.	G. P.	18,747	56,000	Feb. 9-15
5.	G. P.	18,302	58,000	Feb. 8
5.	G. P.	18,084	57,300	Feb. 8
5.	G. P.	18,297	58,500	Feb. 8
5.	G. P.	18,490	57,900	Feb. 8
5.	G. P.	18,742	59,000	Feb. 8
5.	G. P.	21,541	60,700	Feb. 11
6.	S. & W.	52,800	54,900	Feb. 15
6.	R. & D.	15,287	47,400	Feb. 11
6.	R. & D.	15,321	45,000	Feb. 11
6.	S. & W.	51,330	48,500	Feb. 15
6.	S. & W.	16,051	48,100	Feb. 15
8.	C. of G.	13,118	51,600	Feb. 15
8.	G. P.	21,106	49,300	Feb. 11
8.	C. of G.	13,018	57,800	Feb. 11
8.	R. & D.	15,293	40,600	Feb. 15
8.	S. & W.	52,070	54,100	Feb. 11
8.	P. Ry.	20,972	40,200	Feb. 11
8.	G. P.	21,584	57,600	Feb. 10
8.	G. P.	18,700	53,000	Feb. 15
9.	S. & W.	52,500	53,800	Feb. 23
16.	G. P.	18,514	53,200	Feb. 15
16.	G. P.	18,196	60,500	Feb. 23
16.	G. P.	18,121	61,900	Feb. 21
16.	G. P.	18,272	58,800	Feb. 21
16.	G. P.	18,339	59,200	Feb. 21
16.	G. P.	18,340	57,400	Feb. 19
17.	E. T., V. & G.	24,813	50,800	Feb. 19
17.	G. P.	21,600	61,900	Feb. 19
334	17. S. & W.	51,090	51,300	Feb. 19

Date shipped.	Initial.	Number.	Weight.	Date unloaded.
1892.				1892.
Feb. 22.	S. & W....	52,830	56,400	Feb. 19
	22. G. P.....	18,218	60,000	Feb. 19
	23. G. P.....	18,372	56,000	Mar. 1
	23. G. P.....	18,672	57,000	Mar. 1
	23. G. P....	18,069	56,000	Mar. 1
	23. G. P.....	18,747	55,100	Mar. 1
Jan. 30.	G. P.....	18,516	52,600	Mar. 1
	30. W. N. C.....	13,100	37,400	Mar. 1
	30. S. & W.....	51,680	54,400	Mar. 1
	30. G. P.....	18,636	59,000	Feb. 2-12
	30. C. of G.....	13,239	49,300	Feb. 2
	30. G. P.....	21,491	52,900	Feb. 2
	30. G. P.....	21,559	49,100	Feb. 2
Jan. 6.	G. P.....	18,047	53,600	Feb. 2
	7. G. P.....	18,040	57,700	Jan. 10
	7. G. P.....	18,717	59,400	Jan. 10
	7. G. P.....	18,618	58,200	Jan. 10
	7. G. P.....	18,652	58,000	Jan. 10
	7. G. P.....	18,441	57,600	Jan. 9
	7. G. P.....	18,217	61,100	Jan. 10
	7. G. P.....	18,096	62,700	Jan. 10
Forward....			3,056,200	

335 Unloaded at Columbus prior to and including March 4th.
Sheet No. 2.

Date shipped.	Initial.	Number.	Weight.	Date unloaded.
1892.				1892.
Forward			3,056,200	
Jan. 14.	V. M.....	26,600	21,000	Jan. 22
	15. G. P.....	18,440	60,000	Jan. 29
	15. G. P.....	18,284	61,400	Jan. 28
	15. G. P....	18,232	59,700	Jan. 30
	15. G. P.....	18,743	55,000	Jan. 28
	16. G. P.....	18,612	60,200	Jan. 28
	20. G. P.....	18,675	54,000	Jan. 30
	20. G. P.....	18,329	57,500	Jan. 28
	20. G. P.....	18,122	53,500	Feb. 1
	20. G. P.....	18,659	58,800	Jan. 29
	22. G. P.....	18,173	60,500	Jan. 29
	22. G. P.....	18,151	61,900	Jan. 29
	22. G. P.....	18,530	56,500	Jan. 29
	22. G. P.....	18,282	59,200	Jan. 28
	22. G. P.....	18,167	57,100	Jan. 29
	22. G. P.....	18,602	59,600	Jan. 28

Date shipped.	Initial.	Number.	Weight.	Date	
				unloaded.	
1892.				1892.	
Jan. 22.	G. P.	18,262	58,000	Jan.	28
22.	G. P.	18,466	58,200	Jan.	29
22.	G. P.	18,491	58,800	Jan.	29
22.	G. P.	18,044	58,700	Jan.	29
22.	G. P.	18,529	50,000	Jan.	28
22.	G. P.	18,569	58,200	Jan.	28
22.	G. P.	18,331	58,500	Jan.	29
22.	G. P.	18,382	57,200	Jan.	29
22.	G. P.	18,130	59,600	Jan.	29
22.	G. P.	18,071	54,000	Jan.	29
22.	G. P.	18,161	55,400	Jan.	29
22.	G. P.	18,335	56,800	Jan.	29
22.	G. P.	18,550	61,000	Jan.	1
22.	G. P.	18,319	65,000	Jan.	29
22.	G. P.	18,650	57,200	Jan.	29
22.	G. P.	18,710	56,500	Jan.	28
22.	G. P.	18,431	58,000	Jan.	30
336 23.	G. P.	18,236	58,800	Jan.	28
23.	G. P.	18,340	53,700	Jan.	28
23.	G. P.	18,158	57,700	Jan.	29
23.	G. P.	18,540	49,900	Jan.	28
23.	G. P.	18,185	59,000	Jan.	29
23.	G. P.	18,006	56,100	Jan.	29
25.	G. P.	18,198	58,400	Jan.	28
25.	G. P.	18,680	58,800	Jan.	28
25.	G. P.	18,279	59,200	Jan.	28
25.	G. P.	18,583	60,800	Jan.	29
25.	G. P.	18,339	56,900	Jan.	29
25.	G. P.	18,218	58,300	Jan.	29
25.	G. P.	18,489	56,900	Jan.	29
Feb. 15.	C. of G.	18,265	57,200	Jan.	29
15.	C. of G.	13,127	54,300	Jan.	23
16.	S. & W.	16,084	48,600	Jan.	23
16.	V. & A.	78,900	50,800	Jan.	28
16.	S. & W.	51,350	57,400	Jan.	19
16.	G. P.	18,017	56,900	Jan.	19
16.	G. P.	18,057	59,800	Jan.	23
16.	G. P.	18,185	60,600	Jan.	23
Feb. 17.	G. P.	21,236	61,800	Jan.	20
23.	S. & W.	50,530	45,500	Jan.	19
Jan. 30.	G. P.	18,552	61,500	Jan.	15

Total..... 6,283,100

3,141.55

29.10

3,170.65 tons.

- 337 Cars loaned and delivered to the G. S. & F. R. R. before March 4th, 1892, by the Central R. R. & Banking Co., at Columbus, Ga., coal having been shipped by the Sloss Iron & Steel Company.

Date shipped.	Initial.	Number.	Weight.	Date loaned.
Jan. 7, 1892.	G. P.	18,160	58,200	Feb. 6, 1892
			<u>29.10 tons.</u>	

The total tons shown on this sheet next above attached showing total number tons unloaded at Columbus prior to March 4th, 1892.

This is to certify that the above checkings and the checkings on the two above attached sheets — as taken from the records of the Central R. R. & Banking Co. of Georgia.

The tracings were made personally by the undersigned.

C. H. SCHOOLER,

Representing Sloss Iron & Steel Co.

W. B. STARKE,

Chief Clerk Statistical Department R. & D. R. R. Co.

Cars unloaded at Birmingham, Ala., prior to and including March 4th, 1892. Central R. R. & Banking Co. of Georgia; Sloss Iron & Steel Co.

Date shipped.	Initial.	Number.	Weight.	Date unloaded.
Jan. 23, 1892.	G. P.	18,642	61,300	Jan. 29, 1892
			<u>30.65</u>	

This is to certify that the above checkings are correct, as taken from the records of the Central Railroad and Banking Company of Georgia.

The tracings were made personally by the undersigned.

C. H. SCHOOLER,

Representing Sloss Iron & Steel Co.

W. B. STARKE,

Chief Clerk Statistical Department R. & D. R. R. Co.

Cars unloaded at Griffin, Georgia, prior to and including March 4th, 1892. Central Railroad and Banking Company of Georgia; Sloss Iron and Steel Company.

Date shipped.	Initial.	Number.	Weight.	Date unloaded.
Feb. 6, 1892.	S. & W.	20,512	44,000	Feb. 15-16, 1892
			<u>22.00</u>	

- 338 This is to certify that the above checkings are correct, as taken from the records of the Central Railroad and Banking Company of Georgia.

The checkings were made personally by the undersigned.

C. H. SCHOOLER,

Representing Sloss Iron and Steel Company.

W. B. STARKE,

Chief Clerk Statistical Department R. & D. R. R. Co.

Cars unloaded at Americus, Georgia, prior to and including March 4th, 1892. Central Railroad and Banking Company of Georgia; Sloss Iron and Steel Company.

Date shipped.	Initial.	Number.	Weight.	Date unloaded.
Jan. 15, 1892.	G. P.	18,645	62,000	Jan. 29, 1892
			<hr/> 31.00	

This is to certify that the above checkings are correct, as taken from the records of the Central Railroad and Banking Company of Georgia.

The checkings were made personally by the undersigned,
C. H. SCHOOLER,
Representing Sloss Iron and Steel Company.
W. B. STARKE,
Chief Clerk Statistical Department R. & D. R. R. Co.

Cars unloaded at Port Royal, S. C., prior to and including March 4th, 1892. Central Railroad and Banking Company of Georgia; Sloss Iron and Steel Company.

Date shipped.	Initial.	Number.	Weight.	Date unloaded.
Jan. 7, 1892.	S. & W.	5,152	55,000	Jan. 13-26, 1892
Jan. 8, 1892.	G. P.	20,674	387	Jan. 20, 1892
Jan. 22, 1892.	V. & A.	709	496	Jan. 26, 1892
			<hr/> 143,300	
			<hr/> 71.65	

This is to certify that the above checkings are correct, as taken from the records of the Central Railroad and Banking Company of Georgia.

339 The tracings were made personally by the undersigned.
C. H. SCHOOLER,
Representing Sloss Iron and Steel Company.
W. B. STARKE,
Chief Clerk Statistical Department R. & D. R. R. Co.

Cars unloaded at Eufaula, Ala., prior to and including March 4th, 1892. Central Railroad and Banking Company of Georgia; Sloss Iron and Steel Company.

Date shipped.	Initial.	Number.	Weight.	Date unloaded.
Feb. 3, 1892.	V. & A.	726	44,200	Mar. 3, 1892
Feb. 4, 1892.	R. & D.	14,530	43,300	Mar. 3, 1892
Feb. 6, 1892.	G. P.	21,478	57,800	Feb. 19, 1892
"	"	21,498	56,400	Feb. 24, 1892
Feb. 15, 1892.	"	20,735	58,100	Feb. 24, 1892
Feb. 15, 1892.	"	20,644	42,800	Feb. 24, 1892
			<hr/> 302,600	
			<hr/> 151.30 tons.	

This is to certify that the above checkings are correct as taken from the records of the Central Railroad and Banking Company of Georgia.

The tracings were made personally by the undersigned.

C. H. SCHOOLER,

Representing Sloss Iron and Steel Company.

W. B. STARKE,

Chief Clerk Statistical Department R. & D. R. R. Co.

Cars unloaded at Albany, Ga., prior to and including March 4th, 1892. Central Railroad and Banking Company of Georgia; Sloss Iron and Steel Company.

Date shipped.	Initial.	Number.	Weight.	Date unloaded.
Feb. 6, 1892.	G. P.....	21,201	49,000	Feb. 17, 1892
Jan. 16, 1892.	"	18,428	53,400	Feb. 8, 1892
"	"	18,292	53,600	"
			<hr/> 156,000 <hr/>	
			78.00 tons.	

340 This is to certify that the above checkings are correct as taken from the records of the Central Railroad and Banking Company of Georgia.

The tracings were made personally by the undersigned.

C. H. SCHOOLER,

Representing Sloss Iron and Steel Company.

W. B. STARKE,

Chief Clerk Statistical Department R. & D. R. R. Co.

Cars unloaded at Troy, Ala., prior to and including March 4th, 1892. Central Railroad and Banking Company of Georgia; Sloss Iron and Steel Company.

Date shipped.	Initial.	Number.	Weight.	Date unloaded.
Feb. 6, 1892.	C. of G.....	13,200	54,200	Feb. 16, '92
Jan. 16, 1892.	"	13,226	51,700	Jan. 30, '92
			<hr/> 105,900 <hr/>	
			52.95 tons.	

This is to certify that the above checkings are correct as taken from the records of the Central Railroad and Banking Company of Georgia.

The tracings were made personally by the undersigned.

C. H. SCHOOLER,

Representing Sloss Iron and Steel Company.

W. B. STARKE,

Chief Clerk Statistical Department R. & D. R. R. Co.

341 Cars unloaded at Union Springs prior to and including March 4th, 1892. Central Railroad and Banking Company of Georgia; Sloss Iron and Steel Company.

Date shipped.	Initial.	Number.	Weight.	Date unloaded.
Feb. 6, 1892.	C. of G.....	13,086	56,700	Mar. 2, 1892

28.35 tons.

This is to certify that the above checking are correct, as taken from the records of the Central Railroad and Banking Company of Georgia.

The tracings were made personally by the undersigned.

C. H. SCHOOLER,

Representing Sloss Iron and Steel Company.

W. B. STARKE,

Chief Clerk Statistical Department R. & D. R. R. Co.

Cars unloaded at McCormick prior to and including March 4th, 1892. Central Railroad and Banking Company of Georgia; Sloss Iron and Steel Company.

Date shipped.	Initial.	Number.	Weight.	Date unloaded.
1892.				1892.
Jan. 12.	G. P.....	20,392	42,100	Jan. 23
20.	G. P.....	20,840	61,000	Feb. 5
22.	R. & D....	15,233	40,000	Feb. 10
22.	W. N. C..	10,200	34,000	Feb. 16
23.	G. P.....	21,144	53,000	Jan. 30
23.	S. I. C. L....	70,136	38,600	Feb. 19
26.	G. P.....	20,710	46,900	Feb. 6
Feb. 15.	S. & W.....	51,909	45,400	Feb. 29
16.	C. of G.....	13,260	56,500	Feb. 26

417,500

208.75 tons.

342 This is to certify that the above checkings are correct, as shown by the records of the Central Railroad and Banking Company of Georgia.

The tracings were made personally by the undersigned.

W. B. STARKE,

Chief Clerk Statistical Dep't R. & D. R. R. Co.

C. H. SCHOOLER,

Representing Sloss Iron and Steel Company.

Cars unloaded at Spartanburg, S. C., prior to and including March 4th, 1892. Central Railroad and Banking Company of Georgia; Sloss Iron and Steel Company.

Date shipped.	Initial.	Number.	Weight.	Date unloaded.
1892.				1892.
Jan. 7.	C. of G.....	13,026	57,100	Jan. 18
	8. G. P.....	20,970	51,000	Jan. 21
	8. G. P.....	21,155	47,000	Feb. 16
	12. S. & W.....	51,111	47,300	Jan. 28
	12. S. & W.....	5,122	53,300	Jan. 29
	20. C. R. & C.....	6,867	48,000	Feb. 29
	20. C. of G.....	12,017	40,600	Feb. 10
	26. G. P.	20,528	44,000	Feb. 18
	26. S. & W.....	5,155	52,500	Feb. 16

450,800

225.40 tons.

This is to certify that the above checkings are correct, as taken from the records of the Central Railroad and Banking Company of Georgia.

The tracings were made personally by the undersigned.

W. B. STARKE,

Chief Clerk Statistical Dep't R. & D. R. R. Co.

C. H. SCHOOLER,

Representing Sloss Iron and Steel Company.

Cars unloaded at Lyons, Ga., prior to and including March 4th, 1892. Central Railroad and Banking Company of Georgia; Sloss Iron and Steel Company.

Date shipped.	Initial.	Number.	Weight.	Date unloaded.
Feb. 5, '92.	V. & A....	785	45,500	Feb. 11-29, '92

22.75 tons.

343 This is to certify that the above checkings are correct as taken from the records of the Central Railroad and Banking Company of Georgia.

The tracings were made personally by the undersigned.

C. H. SCHOOLER,

Representing Sloss Iron and Steel Company.

W. B. STARKE,

Chief Clerk Statistical Department R. & D. R. R.

Cars unloaded at Fort Valley, Ga., prior to and including March 4th, 1892. Central Railroad and Banking Company of Georgia; Sloss Iron and Steel Company.

Date shipped.	Initial.	Number.	Weight.	Date unloaded.
Feb. 16, '92.	G. P.....	21,082	49,100	Feb. 20, '92

24.55 tons.

This is to certify that the above checkings are correct as taken from the records of the Central Railroad and Banking Company of Georgia.

The tracings were made personally by the undersigned.

C. H. SCHOOLAR,

Representing Sloss Iron and Steel Company.

W. B. STARKE,

Chief Clerk Statistical Department R. & D. R. R.

Cars unloaded at Hurtsboro prior to and including March 4th, 1892.
Central Railroad and Banking Company of Georgia; Sloss Iron and Coal Company.

Date shipped.	Initial.	Number.	Weight.	Date unloaded.
V. & A.		727	43,900	Feb. 29, Mar. 3
			<u>21.95 tons.</u>	

This is to certify that the above checkings are correct, as taken from the records of the Central Railroad and Banking Company of Georgia.

The tracings were made personally by the undersigned.

G. H. SCHOOLER,

Representing Sloss Iron and Steel Company.

W. B. STARKE,

Chief Clerk Statistical Department R. & D. R. R. Co.

344 Endorsement: United States circuit court, eastern division,
southern district of Georgia. Sloss Iron and Steel Company.
Coal up to March 4th, 1892. Report No. 1. Filed March 4th, 1893.
L. M. Erwin, deputy clerk.

Report No. 2.

Statement showing number of tons of coal unloaded after March 4th, 1892, same being made up from the attached sheets, which have been correctly certified to.

Central Railroad and Banking Company of Georgia; Sloss Iron and Steel Company.

Place unloaded.	No. of tons.
Spartanburg, S. C.	69.65
Savannah, Ga.	20.50
McCormick, S. C.	20.00
Troy, Ala.	50.05
Albany, Ga.	51.85
Americus, Ga.	25.00
Smithville, Ga.	134.15
Macon, Ga.	273.10
Augusta, Ga.	172.55
Total.	<u>816.85</u>

Cars unloaded at Spartanburg, S. C., subsequent to March 4th, 1892.
Central Railroad and Banking Company of Georgia; Sloss Iron
and Steel Company.

Date shipped.	Initial.	Number.	Weight.	Date unloaded.
Feb. 17, '92.	C. of Ga.	13,143	60,400	March 25, '92
17, '92.	W. N. C.	131	38,400	April 1, '92
18, '92.	G. P.	20,615	40,500	March 31, '92
			<u>139,300</u>	
			<u>69.65 tons.</u>	

345 This is to certify that the above checkings are correct as
taken from the records of the Central Railroad and Banking
Company of Georgia.

The tracings were made personally by the undersigned.

C. H. SCHOOLER,

Representing Sloss Iron and Steel Company.

W. B. STARKE,

Chief Clerk Statistical Department R. & D. R. R.

Cars unloaded at Savannah, Ga., subsequent to March 4th, 1892.
Central Railroad and Banking Company of Georgia; Sloss Iron
and Steel Company.

Date shipped.	Initial.	Number.	Weight.	Date unloaded.
Feb. 8, '92.	G. P.	18,126	41,000	Mar. 17, '92.
			<u>20.50 tons.</u>	

This is to certify that the above checkings are correct, as taken
from the records of the Central Railroad and Banking Company of
Georgia.

The tracings were made personally by the undersigned.

C. H. SCHOOLER,

Representing Sloss Iron and Steel Company.

W. B. STARKE,

Chief Clerk Statistical Department R. & D. R. R. Co.

Cars unloaded at McCormick subsequent to March 4th, 1892.
Central Railroad and Banking Company of Georgia; Sloss Iron
and Steel Company.

Date shipped.	Initial.	Number.	Weight.	Date unloaded.
Feb. 18, '92.	G. P.	20,410	40,000	Feb. 8, '92
			<u>20 tons.</u>	

This is to certify that the above checkings are correct, as taken
from the records of the Central Railroad and Banking Company of
Georgia.

The tracings were made personally by the undersigned.

C. H. SCHOOLER,

Representing Sloss Iron and Steel Company.

W. B. STARKE,

Chief Clerk Statistical Department R. & D. R. R. Co.

346 Cars unloaded at Troy, Ala., subsequent to March 4th, 1892-
Central Railroad and Banking Company of Georgia; Sloss
Iron and Steel Company.

Date shipped.	Initial.	Number.	Weight.	Date unloaded.
Feb. 4, '92. S. & W.....		5,079	40,300	Mar. 15, '92
24, '92. G. P.....		20,801	59,800	11, '92
			<u>100,100</u>	
			<u>50.50</u>	

This is to certify that the above checkings are correct as taken from the records of the Central Railroad and Banking Company of Georgia.

The tracings were made personally by the undersigned.

C. H. SCHOOLER,

Representing Sloss Iron & Steel Co.

W. B. STARKE,

Chief Clerk Statistical Dep't R. & D. R. R. Co.

Cars unloaded at Albany, Ga., subsequent to March 4, 1892. Central
Railroad and Banking Company of Georgia; Sloss Iron and Steel
Company.

Date shipped.	Initial.	Number.	Weight.	Date unloaded.
Feb. 4, '92. R. & D.....		14,517	41,700	Mar. 7-17, '92
23, '92. G. P.....		21,408	62,000	Mar. 9, '92
			<u>103,700</u>	
			<u>51.85 tons.</u>	

This is to certify that the above checkings are correct as taken from the records of the Central Railroad and Banking Company of Georgia.

W. B. STARKE,

Chief Clerk Statistical Dep't R. & D. R. R. Co.

C. H. SCHOOLER,

Representing Sloss Iron & Steel Co.

347 Cars unloaded at Americus, Ga., subsequent to March 4, 1892.
Central Railroad and Banking Company of Georgia; Sloss
Iron and Steel Company.

Date shipped.	Initial.	Number.	Weight.	Date unloaded.
February 3, 1892. G. P.....		21,158	50,000	March 7-23, 1892
			<u>25 tons.</u>	

This is to certify that the above checkings are correct as taken from the records of the Central Railroad and Banking Company of Georgia.

The tracings were made personally by the undersigned.

W. B. STARKE,

Chief Clerk Statistical Department, R. & D. R. R. Co.

C. H. SCHOOLAR,

Representing Sloss Iron and Steel Company.

Cars unloaded at Smithville, Ga., subsequent to March 4, 1892.

Central Railroad and Banking Company of Georgia; Sloss Iron and Steel Company.

Date shipped.	Initial.	Number.	Weight.	Date unloaded.
Feb. 4, 1892.	S. I. C. L.....	50,230	51,900	March 8-12, 1892
Feb. 17, 1892.	C. of G.....	13,239	59,100	March 8-16, 1892
Feb. 17, 1892.	G. P.....	21,517	62,100	March 8-12, 1892
Feb. 17, 1892.	C. of G.....	13,074	55,200	March 8-16, 1892
Feb. 22, 1882.	R. & D.....	15,379	40,000	March 17-21, 1892

268,300

134.15 tons.

This is to certify that the above checkings are correct, as taken from the records of the Central Railroad and Banking Company of Georgia.

The tracings were made personally by the undersigned.

W. B. STARKE,

Chief Clerk Statistical Department R. & D. R. R. Co.

C. H. SCHOOLER,

Representing Sloss Iron and Steel Company.

348 Cars unloaded at Macon, Ga., subsequent to March 4th, 1892.
Central Railroad and Banking Company of Georgia; Sloss Iron and Steel Company.

Date shipped.	Initial.	Number.	Weight.	Date unloaded.
1892.				1892.
Feb. 3.	R. & D.....	15,254	48,900	Mar. 9
	G. P.....	20,906	60,200	Mar. 8
	R. & D....	15,386	45,000	Mar. 9
	R. of G....	35,500	42,700	Mar. 8
4.	R. & D....	15,329	43,200	Mar. 8
27.	G. P.....	20,987	51,500	Mar. 7
25.	C. P.....	21,427	57,100	Mar. 5
17.	C. P.....	20,459	40,100	Mar. 6
24.	S. & W.....	52,940	57,800	Mar. 7
21.	S. & W.....	51,120	48,000	Mar. 5
15.	R. & D.....	15,252	51,700	Mar. 5

546,200

273.10 tons.

This is to certify that the above checkings are correct, as taken from the records of the Central Railroad and Banking Company of Georgia.

The tracings were made personally by the undersigned.

C. H. SCHOOLER,

Representing Sloss Iron and Steel Company.

W. B. STARKE,

Chief Clerk Statistical Department R. & D. R. R. Co.

Cars unloaded at Augusta, Ga., subsequent to March 4th, 1892.
Central Railroad and Banking Company of Georgia; Sloss Iron and Steel Company.

	Date shipped.	Initial.	Number.	Weight.	Date loaned.
	Jan. 20, '92. ✓	G. P.	20,643	39,400	March 25, '92
	Feb. 15, '92. ✓	G. P.	20,444	45,000	March 17, '92
	Feb. 15, '92. ✓	V. & A.	717	50,900	March 17, '92
349	Feb. 18, '92. ✓	G. P.	21,452	59,700	March 28, '92
	Feb. 23, '92. ✓	S. & W. ...	5,243	52,000	March 29, '92
	Feb. 5, '92. ✓	G. P.	21,079	58,400	March 11, '92
				345,100	
				172.55 tons.	

This is to certify that the above checkings are correct as taken from the records of the records of the Central Railroad and Banking Company of Georgia.

The tracings were made personally by the undersigned.

SCHOOLER,

Representing Sloss Iron and Steel Company.

W. B. STARKE,

Chief Clerk Statistical Department R. & D. R. R. Co.

Endorsement: United States circuit court, eastern division, southern district of Georgia. Sloss Iron and Coal Company. Coal delivered after March 4th, 1892. Report No. 2. Filed March 4th, 1893. L. M. Erwin, deputy clerk.

Report No. 3.

Statement showing number of tons of coal on the bins of the Central Railroad and Banking Company of Georgia on evening of March 4th, 1892, as shown by their records.

Bin.	No of tons.
Savannah, Ga.	2,501
Atlanta, Ga.	31
Augusta, Ga.	285
Macon, Ga.	5,836
Smithville, Ga.	250
Columbus, Ga.	2,252

Bin.	No. of tons.
Sebastopol, Ga.	44
Kellyton, Ala.	7,227

Total No. of tons on bins of the Central Railroad,
March 4th, 1892. 18,426 tons

This is to certify that the above checkings are correct, as
350 taken from the records of the Central Railroad and Banking
Company of Georgia.

The tracings were made personally by the undersigned.

W. B. STARKE,
Chief Clerk Statistical Dep't R. and D. R. R. Co.
C. H. SCHOOLER,
Representing Sloss Iron and Steel Co. and
Va. and Ala. Coal Co.

Endorsement: Statement of coal on bins of Central railroad,
March 4th, 1892. Report No. 3 of C. H. Schooler and W. B. Starke.
Filed February 22d, 1893. L. M. Erwin, deputy clerk.

Statement showing cars exact unloading date of which could not
be obtained. We show the last record of the car as obtained
by us.

Date shipped.	Initial.	Number.	Weight.	Record.
1892.				
Feb. 3.	G. P.	20,760	56,200	From B'h'm Tr. 40. Feb. 5, '92.
20.	W. N. C. .	11,200	40,500	Yemassee L., Feb. 11 to August 6, Mar. 16, '92.
15.	W. N. C. .	16,300	41,400	Millen from Feb. 11 to April 1.
15.	C. of G. . .	12,091	40,300	Unloaded Savannah between Feb. 20, Mar. 24.
23.	C. of G. . .	12,033	39,100	From B'h'm by C. & W. Ex. 2, 29.
"	"	12,041	38,900	Ex., Feb. 22.
24.	G. P.	21,434	60,600	Unloaded at Albany between Feb. 26 and Mar. 9.
		317,100		
		158.55 tons.		

This is to certify that the above checkings were made by the un-
dersigned, and are correct, as taken from the records of the Cen-
tral Railroad and Banking Company of Georgia.

The tracings were made personally by the undersigned.

C. H. SCHOOLER,
Representing Sloss Iron & Steel Company.
W. B. STARKE,
Chief Clerk Statistical Dep't R. & D. R. R. Co.

351 Endorsement: United States circuit court, eastern division, southern district of Georgia. Sloss Iron and Coal Company cars delivered at date not fixed. Report No. 4. Filed March 4th, 1893. L. M. Erwin, deputy clerk.

Evidence introduced on behalf of the Central Railroad and Banking Company of Georgia and its receivers in the Sloss Iron and Steel Company intervention.

Memorandum by the Clerk.

The Central Railroad and Banking Company of Georgia and its receiver introduced in evidence the affidavit of S. R. Shirm, its expert, as to the coal shipped to Augusta, Ga., which already appears in this transcript under the evidence on the intervention of the Virginia and Alabama Coal Company's intervention. Also the affidavit of R. L. Shaw, its expert, showing the amount of coal in the bin at Kellyton coal chute. Also the testimony of E. P. Alexander, which appears hereinbefore in this transcript, and is omitted here to save repetition.

Opinion of the Court.

In the Fifth Circuit Court of the United States for the Eastern Division of the Southern District of Georgia.

ROWENA M. CLARKE <i>et al.</i>	}	In Equity. Bill, etc. Intervention of the Virginia and Alabama Coal Co. and Sloss Iron & Steel Co. Master's Report. Exceptions Thereto.
<i>vs.</i>		
CENTRAL RAILROAD & BANKING COMPANY OF GEORGIA <i>et al.</i>	}	

Hill, Harris & Birch, Steed & Wimberly, for the intervenors.
Lawton & Cunningham, Marion Erwin, for the receiver.

Speer, Judge. Decided December 29th, 1893.

352 The Virginia and Alabama Coal Company sues the receivers appointed in the above-stated case for twenty-six thousand six hundred and seven dollars and forty-four cents (\$26,607.44) for coal furnished. The Sloss Iron and Steel Company sues for fourteen thousand three hundred and fifty-nine dollars and thirty-eight cents (\$14,359.38). Interest is claimed by each intervenor. The cases were tried together. The interventions were referred to the special master, who has made his report thereon, allowing the entire amount of the claims, aggregating forty thousand nine hundred and sixty-six thousand — eighty-two cents (40,966.82), with interest. This finding was reduced slightly by a supplemental report. The master held that the judgment should be paid from the current earnings of the Central railroad in the hands of the receivers, and that the Central should then have a judgment against the Richmond and Danville for the amount so

paid. Exceptions were filed by the counsel for the receivers, and upon the hearing the facts following were made to appear :

The Central Railroad and Banking Company of Georgia had been leased for ninety-nine years by the Georgia Pacific Railroad Company. Under color of this lease, the Richmond and Danville Railroad Company took possession of the entire properties of the Central Company and operated them from the first day of June, 1891, to the 4th day of March, 1892. It appeared from the evidence that the Richmond and Danville took the Central as "a running road," and that there was a considerable amount of coal, how much precisely the evidence does not disclose, in the bins of the Central at the time the Richmond and Danville took possession. Under a bill filed by the plaintiff, the receivers took possession of the property of the Central on the 4th day of March, 1892. They found a considerable quantity of coal in the bins of the property, but the evidence does not disclose whether the Danville received more coal from the Central than the receiver took possession of at the time the properties were surrendered to him. The lease of the Central properties has been abandoned by the Richmond and Danville and the Georgia Pacific. From the evidence it appears that the intervenor coal companies, with certain others, had entered into a combination or agreement by which they refused to sell coal in any quantity whatever to the Richmond and Danville Railroad Company. It is true, however, that Joseph P. Minetree, general purchasing agent of the Richmond and Danville Railroad Company, offered to contract with the Virginia and Alabama Coal Company for a large supply of coal. The evidence discloses the fact that the agents of the intervenor companies hesitated, and indeed refused for a time, to supply the coal desired by the purchasing agent of the Richmond and Danville, but by a process of casuistry, noteworthy at least for its elasticity, an agreement was made to furnish the coal, nominally for the Central, but really for the Richmond and Danville. This is perfectly clear from the evidence of Mr. Ryan, the vice-president and general manager of the Virginia and Alabama Coal Company. No officer of the Central had any knowledge of the contract. The Central had, indeed, practically abandoned its franchise under color of the lease to the Georgia Pacific, of which the Richmond and Danville had availed itself to operate the properties and receive the incomes of the Central.

Much of the coal was delivered directly from the mines to points on the Richmond and Danville at which the Central Railroad and Banking Company of Georgia had no possible concern. Nevertheless, Joseph P. Minetree, general purchasing agent of the Richmond and Danville, expressed the contract in a letter as follows :

Richmond and Danville Railroad Company.

Office general purchasing agent; Joseph P. Minetree, general purchasing agent, Atlanta, Ga.

The Virginia and Alabama Coal Company; Mr. J. R. Ryan, V-P. and G. M., Birmingham, Ala.:

DEAR SIR: We beg to accept your verbal offer of today to furnish the Central Railroad and Banking Company of Georgia with say 275,000 tons of best quality engine steam coal for the next twelve months commencing July 1, 1891, and ending July 1, 1892, 354 at 90 cents per ton of 2,000 pounds, to be delivered on cars at mines, and to be shipped at times and in quantities to suit. Settlements for the coal delivered in any one month to be made on or about the first of the second succeeding month, and the Central Railroad and Banking Company of Georgia reserves the right to increase or decrease the monthly deliveries upon reasonable notice at any time. The division superintendents of the divisions for which the coal will be required will communicate with you as the monthly deliveries and all bills for coal furnished under this contract to be sent direct to the division superintendents. Kindly confirm this at once and oblige,

Yours truly,
(Signed)

JOSEPH P. MINETREE.

General Purchasing Agent.

July 13, 1891.

It is evidence that the Virginia and Alabama Coal Company was not able to furnish all the coal, and certain other companies, the Sloss Iron and Steel Company being among the number, agreed to supply a part of the coal of the Virginia and Alabama Coal Company had contracted to furnish, and the Virginia and Alabama Coal Company sues for the benefit of the several coal companies. Furthermore, the companies have made an apportionment among themselves of the amount of the recovery they seek from the receivers of the Central Railroad and Banking Company of Georgia. It is true that after the appointment of the receiver, much of this coal, directed to various stations on the Central railroad, was taken and used by the receiver. It is now sought to charge the Central railroad proper with the debt arising from the entire contract, amounting, as has been stated, to forty thousand nine hundred and sixty-six dollars and eighty-two cents, with interest, but in the opinion of the court the master was mistaken when he concluded that the Central railroad is liable for the price of all the coal delivered by the intervenors under the contract. The testimony of those witnesses who were parties to the contract shows indisputably that while the Central Railroad and Banking Company of Georgia was designated as the purchasing party, the designation was fictitious. This was done, as we have stated, to escape the agreement *inter sese* of the coal companies, which were parties to the engagement to sell to the Danville. Credit was given to the Richmond and Danville,

much of the coal was shipped directly to its various agencies, the purchase was made by its purchasing agent, no officer of the Central railroad, so far as the evidence discloses, was even consulted.

It is true that a considerable amount of the coal was found in the bins of the Central railroad when the receiver took charge of the properties, but it is also true that the same condition existed when the Richmond and Danville went into possession. The title of the coal for which the receivers are sued passed to the Richmond and Danville when the coal was delivered. There has been no accounting between the Central and the Danville, and it is not possible for the court to say at this time whether the Central is indebted to the Richmond and Danville for coal, or whether the Richmond and Danville is indebted to the Central. It is insisted for the intervenors that the lease was absolutely invalid; that the Richmond and Danville were in possession of the Central railroad as trespassers, and that they have the right to look to the earnings of the Central railroad itself for their security. But if the lease is invalid, and the Richmond and Danville Railroad Company are trespasser, for the intervenors knew all about the facts and they must look to the trespasser for payment for all the coal the latter received. On the other hand the receivers must pay from the current earnings of the road for all the coal received by them from the intervenor companies after the 4th of March, 1892, when the first receiver was appointed.

It is true that much of this coal was delivered to the Port Royal and Augusta railroad, and the Port Royal and Western Carolina railroad, and perhaps other railroads, but they were roads under the control of the Central Railroad and Banking Company of Georgia, and were operated as a part of its system, and these roads have, no doubt, accounted to the receivers for the coal which they received. With regard to that portion of the master's report which finds the receiver and the Central entitled to a judgment against the Richmond and Danville Railroad Company for the amount the receivers must pay to the intervenors, it is overruled for the reason that the court finds the receivers responsible for that coal only which was received by him for the Central railroad after his appointment.

The effort to bring this case within the rule as defined by this court in the case of the Macon Foundry and Machine Works against the receiver, does not appear to be successful. It is generally true, that in applications to appropriate the current earnings of a receivership to its prior indebtedness, that the facts of each case must control the judgment of the court. In the case last cited, the intervenors were foundrymen who had for years been in the employ of the Central railroad, and who continued to repair freight cars mainly belonging to the Central, running on its main stem, without any regard to the change of control. The improvement in their nature furnished an equipment for the road necessary to the receiver and was actually taken by him, and which was

mainly an improvement of the property of the Central railroad itself; besides, there was in that case no express contract made with the Richmond and Danville as in this case.

A decree will be entered reducing the finding of the master in favor of the Virginia and Alabama Coal Company for coal delivered to the receiver after March 4th, 1892, from twenty-six thousand six hundred and seven dollars and forty-four cents, with interest, to six thousand one hundred and seventy-one dollars and ninety-seven cents (\$67,171.97), and the finding in favor of the Sloss Iron and Steel Company for coal delivered to the receiver after March 4th, 1892, from fourteen thousand three hundred and fifty-nine dollars and thirty-six cents, with interest, to seven hundred and thirty-five dollars and sixteen cents (\$-35.16). Upon authority of the case of *Thomas vs. Western Car Company*, 149 United States, pages 95 to 117, interest is denied. There it is declared by the court, Justice Shiras delivering the opinion, that "as a general rule, after property of the insolvent passes into the hands of a receiver or assignees in insolvency, interest is not allowed on claims against the fund. The delay in distribution is the act of the law. It is a necessary incident to the settlement of the estate." In other cases we have allowed interest against the receiver, but in this case we see no reason for departing from the rule above stated.

The receiver is directed to pay as early as is practicable, the amount herein found to be due, and he is further directed, if necessary, to adjust with the receivers of the Savannah and Western Railroad Company the accounts which may exist between them with regard to the coal on account of which this finding is made.

The cost of this proceeding will be divided between intervenors and the receivers in the proportion that the amounts of the intervenors' demand bears to the amount of this finding.

In all other respects, save herein stated, the exceptions to the master's report are sustained.

357 Endorsement: In the fifth circuit court of the United States for western division, southern district of Georgia. Rowena M. Clarke *et al. vs.* Central Railroad and Banking Company of Georgia *et al.* Intervention of Virginia and Alabama Coal Company *et al.* Master's report. Exceptions. The opinion of the court filed in clerk's office, this 29th day of December, 1893. L. M. Erwin, deputy clerk.

Final Decree.

In the United States Circuit Court, Southern District of Georgia,
Eastern Division, November Term, 1893.

ROWENA M. CLARKE <i>et al.</i> , Complain-	} Bill, Dependent Bills, etc.	
ants,		
<i>vs.</i>		
THE CENTRAL RAILROAD AND BANK-	} Interventions of Virginia	
ING COMPANY OF GEORGIA <i>et al.</i>		and Alabama Coal Co. and
		Sloss Iron and Steel Co.
		Master's Report. Exceptions.

Final decree.

The above-stated interventions of the Virginia and Alabama Coal Company and of the Sloss Iron and Steel Company came on to be heard on the pleadings and proofs and on the exceptions to the master's report, and by agreement of counsel were heard together, and were argued by counsel for intervenors and for defendants.

Whereupon, it is considered, ordered and decreed by the court that the Virginia and Alabama Coal Company do have and recover of the Central Railroad and Banking Company of Georgia, and the receivers of the same appointed by this court, to be paid out of the current earnings of the Central Railroad and Banking Company in the hands of the receivers, the sum of six thousand one hundred and seventy-one dollars and ninety-eight cents (\$6,171.98) for the value of 6,857.75 tons of coal of said Virginia and Alabama Coal Company at ninety cents per ton, that being the amount of unpaid-for coal of the said Virginia and Alabama Coal Company in cars consigned to the officers of the Richmond and Danville Railroad Company, and which was unloaded after March 4th, 1892, and appropriated by the receivers of this court.

358 It is further considered, ordered and decreed by the court that the Sloss Iron and Steel Company do have and recover of the Central Railroad and Banking Company of Georgia and the receivers of the same appointed by this court, to be paid out of the current earnings of the Central Railroad and Banking Company in the hands of the receivers, the sum of seven hundred and thirty-five dollars and sixteen cents, for the value of 816.85 tons of coal of said Sloss Iron and Steel Company at ninety cents per ton, that being the amount of unpaid-for coal of the said Sloss Iron and Steel Company in cars consigned to the officers of the Richmond and Danville Railroad Company, and which was unloaded after March 4th, 1892, and appropriated by the receivers of this court.

It further appearing from the evidence that 1,652.10 tons of said coal of the Virginia and Alabama Coal Company so unloaded after March 4th, 1892, by said receivers, was unloaded on the lines of the Savannah and Western Railroad Company, which *was* also being operated by said receivers as a part of the railroad system of the Central Railroad and Banking Company of Georgia, it is further decreed that said receivers may in the adjustment of the operating

expenses of the said roads, charge up in their accounts against the Savannah and Western Railroad Company the amount appropriately chargeable to it for coal used on its lines.

The costs of these proceedings, including master's and examiner's fees, shall be taxed by the clerk, and the same is apportioned between the receivers of the Central Railroad and Banking Company of Georgia and the two intervenors in the proportion that their recovery herein bears to the aggregate of the amounts sued for by said intervenors. And as to the share of costs so apportioned to said intervenors, the same shall be divided between them in proportion to the amount of their claims respectively sued for.

No interest is allowed on the principal amounts herein awarded intervenors to the date of this decree. The receivers are directed to pay over to the counsel of record for said intervenors, as soon as practicable out of the current earnings of the Central Railroad and Banking Company in their hands.

In all other matters not provided for or covered in this decree the exceptions to the master's reports are sustained, and said reports are overruled and set aside.

In open court, January 1st, 1894.

EMORY SPEER,
United States Judge.

359 Endorsement: Circuit court of United States, eastern division, southern district of Georgia. Rowena M. Clarke *et al.*, complainants, *vs.* Central Railroad and Banking Company of Georgia *et al.* Intervention of Virginia and Alabama Coal Company and Sloss Iron and Steel Company. Master's report. Exceptions. Final decree. Filed January 1st, 1894. S. F. B. Gillespie, deputy clerk.

Amendment to Final Decree.

In the Circuit Court of the United States for the Western Division of the Southern District of Georgia.

ROWENA M. CLARKE	}	Bill and Dependent
<i>vs.</i>		Bill Consolidated
CENTRAL RAILROAD AND BANKING COMPANY		Therewith.
OF GEORGIA <i>et al.</i>		

Interventions of the Virginia and Alabama Coal Company and of the Sloss Iron and Steel Company.

Upon motion of counsel for inte-venors in the above-stated case and with the consent of counsel for the defendants, it is ordered that the final decree rendered January 1st, 1894, in this case be amended as follows:

By inserting between the second and third lines thereof the following words, "suing for itself and for the use of;" so that as

amended the said decree shall read as follows: "Virginia and Alabama Coal Company suing for itself and for the use of the Sloss Iron and Steel Company," etc.

EMORY SPEER, *Judge*.

March 31st, 1894.

Endorsement: Rowena M. Clarke *vs.* Central Railroad and Banking Company *et al.* Intervention of Virginia and Alabama Coal Company. Order amending decree. Filed March 31st, 1894. L. M. Erwin, deputy clerk.

360 In the Circuit Court of the United States, Eastern Division, Southern District of Georgia.

Appeal to the Circuit Court of Appeals for the Fifth Circuit.

MRS. ROWENA M. CLARKE

vs.

CENTRAL RAILROAD AND BANKING COMPANY
of Georgia, Georgia Pacific Railroad Com-
pany, The Richmond and Danville Rail-
road Company, The Richmond and West
Point Terminal Railway and Warehouse
Company, The Central Trust Company,
H. T. Inman, E. P. Howell, James Swan,
and J. C. Maben, *et al.*

Bill in Circuit Court
of United States
for Southern Dis-
trict of Georgia,
Eastern Division.

CENTRAL RAILROAD AND BANKING COMPANY
OF GEORGIA

vs.

THE FARMERS' LOAN AND TRUST COMPANY,
Trustee, *et al.*

Bill in Circuit Court
of United States
for Southern Dis-
trict of Georgia,
Eastern Division.

THE FARMERS' LOAN AND TRUST COMPANY

vs.

THE CENTRAL RAILROAD AND BANKING COM-
PANY OF GEORGIA *et al.*

Bill in Circuit Court
of United States
for Southern Dis-
trict of Georgia,
Eastern Division.

All of said cases having been consolidated by order of the court with the first case above stated.

In the Circuit Court of the United States, Eastern Division, Southern District of Georgia.

Appeal to the Circuit Court of Appeals for the Fifth Circuit.

361 THE VIRGINIA AND ALABAMA COAL
Company, Suing in its Own Behalf
and for the Use of the Sloss Iron and Steel
Company, Intervenor, Appellee,

vs.

THE CENTRAL RAILROAD AND BANKING COM-
pany of Georgia—H. M. Comer, Receiver of
the Central Railroad and Banking Com-
pany of Georgia—and against The Rich-
mond and Danville Railroad Company,
The Farmers' Loan and Trust Company,
Trustee; The Central Trust Company, *et al.*

Intervening Petition
in the Foregoing
Principal Cases.

And now comes the said intervenor The Virginia and Alabama Coal Company suing in its own behalf and for the use of the Sloss Iron and Steel Company, and conceiving itself aggrieved by the decree made by the said court on the first day of January, 1894, during the present November term, 1893, of said court in the cause of the Virginia and Alabama Coal Company suing in its own behalf and for the use of the Sloss Iron and Steel Company against the Central Railroad and Banking Company of Georgia *et al.*, said decree setting aside the master's report upon the intervening petitions of said Virginia and Alabama Coal Company (the same being originally two interventions, but afterwards by consent of counsel consolidated and heard as one case), and in which decree said court reduced the finding of the master in favor of the Virginia and Alabama Coal Company from twenty-six thousand six hundred and seven dollars and forty-four cents (\$26,607.44), with interest, to six thousand one hundred and seventy-one dollars and ninety-seven cents (\$6,171.97) and reduced the finding in favor of the Sloss Iron and Steel Company from fourteen thousand three hundred and fifty-nine dollars and thirty-six cents (\$14,359.36), with interest, to seven hundred and thirty-five dollars and sixteen cents

362 (\$735.16) and doth hereby in open court during the same term during which said decree was rendered, appeal from said decree to the United States circuit court of appeals for the fifth circuit, and prays that this its appeal be allowed by this honorable court and that a transcript of the record and proceedings and papers upon which said decree was made be duly authenticated and sent to the said United States circuit court of appeals for the fifth circuit aforesaid.

Appellant also tenders herewith a bond conditioned for the payment of the costs of appeal as required by law and prays the court to approve said bond and allow this its appeal.

HILL, HARRIS & BIRCH,
Solicitors for Appellants.

SOUTHERN DISTRICT OF GEORGIA, }
Eastern Division, } 88.

Circuit Court of the United States for said Division and District.
In Open Court.

And now, to wit, on the 31st day of March, 1894, and during the November term, 1893, of said court, it is ordered that the appeal be allowed as prayed for.

EMORY SPEER, *Judge.*

Endorsement: Rowena M. Clarke vs. Central Railroad and Banking Company *et al.* Intervention of Virginia and Alabama Coal Company for itself and for use of Sloss Iron and Steel Company. Appeal filed March 31st, 1894. L. M. Erwin, deputy clerk.

Assignment of Errors.

In the Circuit Court of the United States for the Eastern Division
of the Southern District of Georgia.

363 MRS. ROWENA M. CLARKE *et al.*,
 Complainants,
 vs.
CENTRAL RAILROAD AND BANKING
Company of Georgia *et al.*, De-
 fendants. } Bill and Dependent Bills Con-
 } solidated Therewith. Ap-
 } peal to the Circuit Court of
 } Appeals for the Fifth Cir-
 } cuit.

THE VIRGINIA AND ALABAMA COAL
Company, Suing in its Own Be-
half and for the Use of the Sloss
Iron and Steel Company, Appel-
lant,
vs.
THE CENTRAL RAILROAD AND BANK-
ing Company of Georgia *et al.*

Now on this the 31st day of March, 1894, comes the Virginia and Alabama Coal Company, for itself and suing for the use of the Sloss Iron and Steel Company, and says that in the record and proceedings in the above-entitled matter there is manifest error in this, to wit: that the court erred in making the final decree in and upon the interventions above stated, the same being interventions in the cause of Rowena M. Clarke *et al.*, complainants, against The Central Railroad and Banking Company of Georgia *et al.*, respondents, and other dependent bills consolidated therewith, on the first day of January, 1894, at the November term, 1893, of the said circuit court, which said final decree set aside the master's report upon said interventions and sustained the exceptions filed thereto by the said Central Railroad and Banking Company of Georgia and by H. M. Comer, receiver, and reducing the finding and judgment awarded

by said master against the defendants from the sum of twenty-six thousand six hundred and seven dollars and forty-four cents (\$26,607.44) in favor of the Virginia and Alabama Coal Company to the sum of six thousand one hundred and seventy-one dollars and ninety-seven cents (\$6,171.97), and reducing the finding and judgment awarded by the master in favor of the said Sloss Iron and Steel Company from the sum of sixteen thousand three hundred and fifty-nine dollars and thirty-eight cents (\$16,359.38) to the sum of seven hundred and thirty-five dollars and sixteen cents (\$735.16) and awarding certain costs accrued in said case against the intervenor:

1. Because the said master's original report contained and embodied true and correct findings of fact and conclusions of law arising upon said interventions; and the said report should have been sustained and approved and made the decree of the court.

2. Because the exceptions to said report filed by the Central Railroad and Banking Company of Georgia and by H. M. Comer, receiver thereof, to wit, exceptions both of law and fact, should each and all have been overruled and set aside.

3. Because the exceptions filed by the intervenors to the supplemental report of the master, in which supplemental report the master reduced the amount of his original finding in favor of the intervenors, should have been sustained.

4. Because error was committed by the court in said decree in refusing to decree in favor of the Virginia and Alabama Coal Company in its own behalf sixty-seven hundred dollars (\$6,700) for seven thousand four hundred and forty-five tons of coal, which was the proportion of the coal of the said Virginia and Alabama Coal Company on the bins of the Central Railroad Company on March 4th, 1892, at the time the receiver of the said Central Railroad and Banking Company of Georgia was appointed, and in refusing to decree against the said Central Railroad and Banking Company of Georgia and the receiver the sum of three thousand eight hundred and eighteen dollars (\$3,818) for four thousand and eighteen tons of coal furnished by the Sloss Iron and Steel Company, and which was the proportion of the coal of said last-mentioned company of the total coal on the bins at the time of the appointment of the receiver. The said quantities of coal were taken possession of by the receiver appointed by the court and actually used in the operation of the Central Railroad and Banking Company and its leased and controlled lines during the receivership.

By thus appropriating and using the same in operating the said lines of said railroad company the said receivers became liable to pay to the said intervenors the amount due for said coal. Whether at the time the Richmond and Danville Railroad Company took possession of the lines of the Central Railroad and Banking Company, in June, 1891, the Central Railroad and Banking Company had on hand an amount of coal equal to the thirteen thousand eight hundred and seventy-two tons which were on hand March 4th, 1892 (of which the said intervenors contributed the proportionate parts above stated), was not shown by any evidence other than

the mere general fact that the Richmond and Danville Railroad Company took the Central Railroad and Banking Company of Georgia as a running road; but whether at that time the Richmond and Danville railroad got the same amount of coal or a greater amount or a less amount than was on hand on the 4th of March, 1892, creates a question merely of accounting between the Richmond and Danville Railroad Company and the Central Railroad and Banking Company of Georgia, and cannot affect the liability of the receivers for the coal used and appropriated as aforesaid. Intervenor's debt for such coal constitutes a preferential debt against the earnings of the road while in the hands of a receiver and against the corpus of the property should the said net earnings not be adequate to pay said debt.

5. The court erred in refusing to decree against the said defendants the sum of thirteen thousand seven hundred and thirty-five dollars and fifty cents (\$13,735.50) for fifteen thousand two hundred and sixty-two (15,262) tons of coal furnished by the Virginia and Alabama Coal Company prior to the receivership, and which was used by the Richmond and Danville Railroad Company in operating the lines of the Central Railroad and Banking Company of Georgia, and the sum of ten thousand three hundred and twenty dollars and seventeen cents (\$10,320.17) for ten thousand nine hundred and sixty-eight tons which was furnished by the Sloss Iron and Steel Company prior to said receivership and used by the Richmond and Danville Railroad Company, operating the lines of the said Central Railroad and Banking Company of Georgia; which amounts were found in favor of the said intervenors by the master's original report.

Said coal was furnished by the intervenors under a contract with Joseph P. Minetree, who represented to the intervenors that he was authorized to contract for supplies to be used in the operation of the Central Railroad and Banking Company of Georgia.

If the lease of the Central Railroad and Banking Company of Georgia to the Georgia Pacific Railroad Company, by virtue of which lease the Richmond and Danville Railroad Company was operating the lines of the Central Railroad and Banking Company of Georgia, was valid, then the said Minetree was authorized to make such contract, and if said lease was illegal or invalid then the said Minetree was by the act and consent of a majority of the stockholders and bondholders of the Central Railroad and Banking Company of Georgia and by the act of the corporation itself and by the acquiescence and consent of a majority of the stockholders and bondholders and agent *de facto*, in possession of the properties of the said Central Railroad and Banking Company of Georgia and with apparent authority derived from the acts and acquiescence of said stockholders and bondholders and the corporation itself to contract for the corporation and to bind the same by contracts for supplies. The equity of intervenors as supply creditors to be paid for supplies furnished upon the faith of a contract so made and upon the faith of the earning capacity of the Central Railroad and Banking Company is paramount to any equity

which the said Central Railroad and Banking Company of Georgia or its stockholders or bondholders may have to repudiate the contracts of such illegal agent. The debt created by the contract aforesaid, or if not by such contract the debt created on *quantum meruit* by the furnishing of the coal by the intervenors and its acceptance and use by said defendants creates a preferential debt against the earnings of said Central Railroad and Banking Company of Georgia in the hands of the receiver against the corpus of the property itself prior to the lien of the mortgage if said earnings should not be sufficient to satisfy said debt.

6. Error was committed by the court in failing to decree that the debt of six thousand one hundred and seventy-one dollars and ninety-seven cents (\$6,171.97) for coal received and used by the receivers of the Central Railroad and Banking Company of Georgia after the fourth of March, which coal was furnished by the Virginia and Alabama Coal Company, and for seven hundred and thirty-five dollars and sixteen cents (\$735.16) for coal of the Sloss Iron and Steel Company which was received and used by the said receiver after the fourth of March was a preferential debt constituting a lien on the corpus of the property in the hands of the receivers.

7. Error was committed by the court in said decree in failing and refusing to award judgment in favor of the Virginia and Alabama Coal Company suing in its own behalf for the sum of twenty-six thousand six hundred and seven dollars and forty-four cents (\$26,607.44) and for the Virginia and Alabama Coal Company suing for the dues of the Sloss Iron and Steel Company for the sum of sixteen thousand three hundred and fifty-nine dollars and thirty-eight cents (\$16,359.38), the same being the total debts of the intervenors for coal which was supplied by the intervenors and actually used in the operation of the lines of the Central Railroad and Banking Company and all of which was furnished within a reasonably short time prior to the appointment of the receiver and which under the rule of law commonly known as the rule in *Fosdick vs. Schall* constitutes a debt in favor of intervenors as a supply creditor which debt is entitled to priority of payment out of the net earnings of the property, in the hands of the receiver, or if not so paid then to be paid out of the corpus of the property or its proceeds. The current income of said railroad company which
367 should have been used to pay said debts was diverted to the payment of interest on the bonds of and of betterments upon the property of the company.

8. Error was committed by the court in said decree with reference to the amount of the coal on the bins on the fourth of March, 1892; if not in finding and decreeing as complained in the aforesaid fourth assignment of error, then in failing to decree that the said defendants were liable for coal furnished by the Virginia and Alabama Coal Company in the sum of sixty-seven hundred dollars (\$6,700), and for coal furnished by the Sloss Iron and Steel Company in the sum of three thousand eight hundred and eighteen dollars (\$3,818), because the coal so furnished and represented by said amounts was furnished to the Central Railroad and Banking Com-

pany of Georgia and actually used in the operation of the lines of said company, and the debt thereby created constitutes a preferential debt against the income and corpus of said property under the rule of law commonly known as the rule in the case of *Fosdick vs. Schall*.

9. Because the court erred in refusing to decree that the said defendants pay to intervenors the full amount of their claims as aforesaid, it being shown by the record in said case that during the administration of the trust by the receiver, the court for the purpose of equipping the property and continuing its operation, and for the benefit of the trust had disposed of large amounts of property, the assets of the Central Railroad and Banking Company, amounting to several hundred thousand dollars or other large sum and which assets if they had not been so disposed of in the interest of the trust and of the administration of the property would have been subject to a decree in favor of said intervenor.

10. Error was committed in said decree in awarding against appellant the greater portion of the costs in the case, all of which costs should have been assessed against the defendants.

11. There was error in said decree in this: in failing and refusing to decree that the receiver of the Central Railroad and Banking Company of Georgia was liable to the intervenors (if the company was not liable under the contract, as was held by the court) for the coal which was on the bins on the 4th of March, 1892, and for that which was delivered to the receivers after said date at the market value of said coal, at the time and places where it was on said bins and where it was delivered to said receiver.

HILL, HARRIS & BIRCH,

Solicitors for Intervenor.

368 Endorsement: Rowena M. Clarke *vs.* Central Railroad and Banking Company *et al.*, Virginia and Alabama Coal Company, etc. Interventions. Assignment of errors filed March 31st, 1894. L. M. Erwin, deputy clerk.

Bond.

In the United States Circuit Court for the Eastern Division of the Southern District of Georgia.

ROWENA M. CLARKE *et al.*

vs.

THE CENTRAL RAILROAD AND BANKING COMPANY *et al.*

} Bill, &c., Dependent Bills.

THE VIRGINIA AND ALABAMA COAL COMPANY,
Suing in its Own Behalf and for the Use of the
Sloss Iron and Steel Company,

vs.

THE CENTRAL RAILROAD AND BANKING COMPANY *et al.*

Know all men by these presents that the Virginia and Alabama Coal Company, suing in its own behalf and for the use of the Sloss

Iron and Steel Company as principal and the American National Bank as security, are held and firmly bound unto the Central Railroad and Banking Company of Georgia and the receivers thereof, the Central Trust Company of New York, the Farmers' Loan and Trust Company, the Richmond and Danville Railroad Company and to each and all of the parties to the above stated cause interested adversely to the appellants herein — the sum of two hundred dollars, for the payment of which we bind ourselves and each of us, our heirs, executors, administrators and successors jointly and severally, firmly by these presents. Sealed with our seals and dated this 31st day of March, A. D. 1894.

Whereas, the above-named Virginia and Alabama Coal Company suing as aforesaid has prosecuted an appeal to the United States circuit court of appeals for the fifth circuit to reverse the decree rendered in the above-entitled cause so made and entered in the said circuit court of the United States for the eastern division of the southern district of Georgia on the first day of January, 1894:

Now, therefore, the condition of this obligation is such that if the above-named Virginia and Alabama Coal Company suing as aforesaid shall prosecute said appeal to effect and answer all costs and damages if it shall fail to make its plea good, then this obligation shall be void; otherwise to remain in full force and virtue.

THE VIRGINIA AND ALABAMA
COAL COMPANY,

Appellants, as Aforesaid, [L. s.]

By HILL, HARRIS & BIRCH,

Their Solicitors of Record.

THE AMERICAN NATIONAL BANK
OF MACON,

[L. s.]

By L. P. HILLYER, *Cashier.*

Witness as to bank's signature this the 30th day of March, 1894.

M. J. REDMOND,

Notary Public, Bibb County, Ga.

In open court, March 31, 1894.

The foregoing bond is approved.

EMORY SPEER, *Judge.*

Endorsement: Rowena M. Clarke *vs.* Central Railroad and Banking Company of Georgia *et al.* Intervention of Virginia and Alabama Coal Company, etc. Appeal bond filed March 31st, 1894. L. M. Erwin, deputy clerk.

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Citation.

UNITED STATES OF AMERICA,)
Southern District of Georgia,) ss:

To the Central Railroad and Banking Company of Georgia, H. M. Comer, receiver of the Central Railroad and Banking Company of Georgia; The Richmond and Danville Railroad Company, The Central Trust Company of New York, The Farmers' Loan and Trust Company of New York; to each and all of the parties interested adversely to the appeal entered, as herein below stated, by the Virginia and Alabama Coal Company, suing in its own behalf and for the use of the Sloss Iron and Steel Company:

You are hereby cited and admonished to be and appear at the next circuit court of appeals of the United States for the fifth circuit to be held at New Orleans, Louisiana, on the fourth Monday in April, A. D. 1894, to wit: within thirty days from the signing of this citation, pursuant to an appeal filed in the office of the clerk of the circuit court of the United States for the eastern division of the southern district of Georgia, wherein said Virginia and Alabama Coal Company suing as aforesaid is appellant and you, the above-named parties to whom this citation is directed, are respondents, to show cause, if there be, why decree in said appeal mentioned should not be corrected and speedy justice done to the parties on that behalf.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 31st day of March, 1894.

In open court.

EMORY SPEER,
District Judge of the Southern District of Georgia,
and Being the Judge Before Whom the Decree
Complained of was Rendered.

Endorsement: Rowena M. Clarke vs. Central Railroad and Banking Company *et al.* Intervention of Virginia and Alabama Coal Company, etc. Citation filed March 31st, 1894. L. M. Erwin, deputy clerk.

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Acknowledgments of Service of Citation.

Service of the foregoing citation acknowledged; copy received and all further service waived.

This 13th day of April, 1894.

CENTRAL TRUST COMPANY OF
 NEW YORK,
 By HENRY B. TOMPKINS, *Solicitor.*

Due and legal service of the foregoing citation acknowledged; copy and all further service waived.

April 19th, 1894.

GEORGE A. MERCER & SON,
Solicitors for the Farmers' Loan and Trust Company.
LAWTON & CUNNINGHAM,
MARION ERWIN,
*Solicitors for the Central Railroad and
Banking Company of Georgia and for
H. M. Comer, Receiver of the Same.*

Service acknowledged, copy received, this 23d day of April, 1894.

HENRY JACKSON.
J. R. LAMAR.

GEORGIA, }
Fulton County. }

I have this day personally served copy of the within on Henry Jackson, counsel for the Pacific Company and the Richmond and West Point Terminal Railway and Warehouse Company.

JOHN M. SLATON.

Sworn to and subscribed before me, this 20th day of June, 1894.

EUGENE M. MITCHELL,
Notary Public, Fulton County, Georgia.

372 *Orders Extending Time for Clerk to Prepare Transcript of Record on Appeal.*

ROWENA M. CLARKE *et al.*

vs.

CENTRAL RAILROAD AND BANKING COMPANY OF GEORGIA *et al.* }
and Various Cases Consolidated Therewith. }

Intervention of the Virginia and Alabama Coal Company for itself and for the use of the Sloss Iron and Steel Company in said cases, eastern division, southern district of Georgia.

It being made to appear to the court that the clerk of this court will not be able on account of the volume and extent of the record in the above-stated intervention to make out a copy of the same by the 4th Monday in April inst., at which time the appeal in said case was made returnable to the circuit court of appeals—

It is now ordered and adjudged that the time heretofore fixed be extended from the fourth Monday in April to the first Monday in June instead of the said fourth Monday in April; and that the time for the service of the citations in said case be likewise extended from the said fourth Monday in April to the first Monday in June, 1894.

In open court, this 21st day of April, 1894.

EMORY SPEER, *Judge.*

Endorsement: Circuit court of United States, southern district of Georgia. Intervention of Virginia and Alabama Coal Company and Sloss Iron and Steel Company in case of Rowena M. Clarke *et al. vs.* Central Railroad and Banking Company and consolidated cases. Order extending time for clerks to prepare transcript of record on appeal. Filed April 21, 1894. S. F. B. Gillespie, deputy clerk.

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Order No. 2.

THE VIRGINIA AND ALABAMA COMPANY, for Itself and for the	}
Use, etc.,	
<i>vs.</i>	
THE CENTRAL RAILROAD AND BANKING COMPANY <i>et al.</i>	}

It appearing to the court that there is good and sufficient cause therefore, it is ordered by the court that the time at which the appeal in the above-stated case is made returnable be extended from the first Monday in June to the first Monday in July and the time for the service of citations upon said appeal is likewise extended.

June 1, 1894.

EMORY SPEER, *Judge.*

Endorsement: United States circuit court, eastern division, southern district of Georgia. Virginia and Alabama Coal Company *et al. vs.* Central Railroad and Banking Company of Georgia *et al.* Order extending time, etc. Filed June 1, 1894. L. M. Erwin, deputy clerk.

Order No. 3.

ROWENA M. CLARKE	}	Intervention of the Virginia
<i>vs.</i>		and Alabama Coal Company
THE CENTRAL RAILROAD AND		for Itself and for the Use of
Banking Company of Georgia	}	Sloss Iron and Steel Com-
and Other Cases Consolidated		pany. Final Decree. Ap-
Therewith.		peal.

It being shown to the court that there is good and sufficient cause therefore—

It is ordered and adjudged that the time to which the foregoing appeal is made returnable be extended from the first Monday in July to the first Monday in August, 1894.

In open court, June 23d, 1894.

EMORY SPEER, *Judge.*

374 & 375 Endorsement: U. S. circuit court, eastern division, southern district of Georgia. Rowena M. Clarke *vs.* Central Railroad and Banking Company of Georgia *et al.* and consolidated causes. Intervention of Virginia and Alabama Company for itself and for use of Sloss Iron and Steel Company. Order extending time for return of appeal to first Monday in August, 1894. L. M. Erwin, deputy clerk.

United States Circuit Court, Eastern Division, Southern District of Georgia.

SOUTHERN DISTRICT OF GEORGIA, ss :

I, H. H. King, clerk of the circuit court of the United States for the southern district of Georgia, do hereby certify that the writing annexed to this certificate is a true, correct and complete transcript of the record, as directed by law to be made and copies of the proofs and of such entries and papers of file as is necessary on the hearing of the appeal on the intervention of the Virginia and Alabama Coal Company and the Sloss Iron and Steel Company in the equity cause of Rowena M. Clarke *et al.*, complainants, and the Central Railroad and Banking Company of Georgia *et al.*, respondents, late pending in said circuit court for the eastern division of the southern district of Georgia, and appealed by intervenors to the circuit court of appeals for the fifth circuit, as the same remains of file and of record in my office.

Witness my official signature and the seal of said circuit court this 30th day of June, A. D. 1894.

H. H. KING,
By L. M. ERWIN,
Deputy Clerk.

376 United States Circuit Court of Appeals, Fifth Circuit, November Term, 1894.

(Extract from Minutes.)

THE VIRGINIA AND ALABAMA COAL COMPANY	}
<i>v.</i>	
THE CENTRAL RAILROAD AND BANKING COMPANY OF GEORGIA <i>et al.</i>	

TUESDAY, February 12, 1895.

This cause was called this day and submitted to the court upon briefs of Mr. Walter B. Hill for the appellants, and by Mr. Marion Erwin for the appellees.

United States Circuit Court of Appeals, Fifth Circuit, November Term, 1894.

(Extract from Minutes.)

THE VIRGINIA AND ALABAMA COAL COMPANY	}
<i>v.</i>	
THE CENTRAL RAILROAD AND BANKING COMPANY OF GEORGIA <i>et al.</i>	

MONDAY, February 25, 1895.

This cause came on to be heard on the transcript of the record
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377 from the circuit court of the United States for the southern district of Georgia, and was argued by counsel.

On consideration whereof it is now here ordered, adjudged, and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby, reversed, and this cause remanded to said circuit court with instructions to enter a decree in favor of the intervenors, The Virginia and Alabama Coal Company and The Sloss Iron and Steel Company, for the amounts respectively due them for coal delivered to the lines under the control and forming a part of the system of the Central Railroad and Banking Company of Georgia, as shown by the evidence in this cause, including the coal furnished before the appointment of the receivers and that found in the bins of the line after such appointment and of which the receivers took possession, as well as the coal delivered to the receivers after their appointment, the amount due being determined by the contract price, and an order that they recover from the Central Railroad and Banking Company of Georgia and the receivers of the same such sums thus found to be due. No decree will be entered in favor of the intervenors for the payment of that portion of the coal which was used by the Charlotte, Columbia and Augusta Railroad Company.

It is further decreed that the appellees be condemned to pay the costs of this cause in this court, for which execution may be issued out of said circuit court.

378 United States Circuit Court of Appeals, Fifth Circuit, November Term, 1894.

(Extract from Minutes.)

THE VIRGINIA AND ALABAMA COAL COMPANY	}
<i>v.</i>	
THE CENTRAL RAILROAD & BANKING COMPANY OF GEORGIA <i>et al.</i>	}

TUESDAY, April 30, 1895.

On the oral motion of Mr. Alex. R. Lawton, Jr., of counsel for the appellees, it is ordered that he be allowed to file a petition for rehearing in this cause.

And on the 30th day of April, 1895, a petition for rehearing was filed in said cause in the words and figures following, to wit:

379 United States Circuit Court of Appeals, Fifth Circuit.

ROWENA M. CLARKE *et al.*

vs.

THE CENTRAL RAILROAD & BANKING COM-
PANY OF GEORGIA *et al.*

THE CENTRAL RAILROAD & BANKING COM-
PANY OF GEORGIA

vs.

THE FARMERS' LOAN & TRUST COMPANY OF
NEW YORK *et al.*

THE FARMERS' LOAN & TRUST COMPANY OF
NEW YORK

vs.

THE CENTRAL RAILROAD & BANKING COM-
PANY OF GEORGIA *et al.*

Bill, Dependent Bills,
etc. No. 319.

Intervention of the
Virginia and Ala-
bama Coal Com-
pany and Sloss Iron
and Steel Company.

And now comes H. M. Comer and R. Somers Hayes, receivers of the Central Railroad & Banking Company of Georgia, and the Central Railroad & Banking Company of Georgia, and the Farmers' Loan & Trust Company, and the Central Trust Company of New York, and respectfully ask a rehearing in the above-entitled cause, and for grounds for rehearing respectfully show :

First. Because the circuit court of appeals erred in finding that the debts claimed by intervenors were current debts for operating expenses of the Central Railroad lines made in ordinary course of business, to be paid out of current earnings.

The record shows that coal was bought at the time the Richmond & Danville Railroad Company was in control of and operating the Central Railroad lines under a contract made by the officers 380 of said Richmond & Danville Railroad Company, who were proved to have had no connection with the Central Railroad & Banking Company of Georgia, and could not bind it by any contract; and, while the contract was made by said intervenors in name of the Central railroad, it was well known to intervenors that this was merely to avoid a conflict with other coal companies with whom they had agreed to furnish nothing to the Richmond & Danville Railroad Company. No evidence is shown that the Central Railroad & Banking Company ever had any knowledge of the contract until suit was brought by intervenors. Under these facts, we contend that it was error for the court to treat the contract as one made by the Central Railroad & Banking Company of Georgia.

Second. If the contracts sued on were made by the Richmond & Danville Railroad Company when it was operating the Central railroad and its lines under a lease, then the circuit court erred in holding that there had been any diversion of the income or earnings of the Central Railroad & Banking Company of Georgia to the payment of interest to the bondholders, in preference to the claims for supplies, etc. The lease contract required the lessee to pay all

of its interest, and the Richmond & Danville railroad had assumed this duty, and had paid in accordance with its contract the interest due by the Central railroad January 1st, 1892, arising from the operation of the Central railroad while its property was in hands of Richmond & Danville Railroad Company, and was not in the control of the Central railroad; and to require the Central railroad to pay debts made by contracts of Richmond & Danville railroad is imposing an obligation and debt upon the Central railroad without any authority in law. While a railroad company which leases its lines may be liable for a failure to perform any duties imposed upon it for the benefit of the public, yet we know of no law which imposes upon it the duty of paying the contract debts of the lessee company.

The equitable sequestration provided for in the cases of *Fosdick v. Schall*, and other cases of like character, has no application to this case. No income was diverted by the Central Railroad & Banking Company of Georgia, and therefore no equitable right accrued under those cases.

381 The rule in *Fosdick v. Schall* and the other cases does not create a debt against an insolvent company, but merely gives dignity to an existing debt, and allows it a preference over a mortgage debt when income has been used to keep an insolvent railroad a going concern. The decision by the circuit court of appeals does not apply the principle established by the Supreme Court of the United States, but clearly establishes a new principle, that when a railroad company is leased to another, the lessor company becomes a guarantor for all contracts for supplies, etc., made by the lessee company; and when such supplies are not paid for, the seller may demand payment of the lessor, and enforce his demand as a debt of superior dignity to that of mortgage creditors.

No authority can be shown to warrant such a decision, and no legal or equitable principle can be established to support it. It is a radical change of the relation of mortgage creditors to railroad property, and is an extension of the rule laid down in the case of *Fosdick v. Schall* in the face of the recent decisions of the Supreme Court of the United States, limiting and restricting the principle ruled in that case.

Kneeland v. Railroad, 136 U. S., 89.

Morgan v. Texas C. R. R., 137 U. S., 199.

In the case of *Kneeland v. American Loan & Trust Company*, 136 U. S., 89, decided in 1890, the Supreme Court uses the following pointed language laying down the limitations under which courts should use this power of displacing vested liens: "The appointment of a receiver vests in the court no absolute control over the property, and no general authority to displace vested contract liens. Because in a few specified and limited cases this court has declared that unsecured claims were entitled to priority over mortgage debts, an idea seems to have obtained that a court appointing a receiver acquires power to give such preference to any general and unsecured claims. It has been assumed that a court appointing a receiver

could rightfully burden the mortgaged property with the payment of any unsecured indebtedness. Indeed, we are advised that some courts have made the appointment of receivers conditional upon the payment of all unsecured indebtedness in preference to the mortgage liens sought to be enforced. Can anything be conceived which more thoroughly destroys the sacredness of contract obligations? One holding a mortgage debt upon a railroad has the same right to demand and expect of the court respect for his vested and contracted priority as the holder of a mortgage on a farm or lot. So, when a court appoints a receiver of railroad property, it has no right to make that receivership conditional on the payment of other than those few unsecured claims, which, by the rulings of this court, have been declared to have an equitable priority. No one is bound to sell to a railroad company or to work for it, and whoever has dealings with a company whose property is mortgaged must be assumed to have dealt with it on the faith of its personal responsibility, and not in expectation of subsequently displacing the priority of the mortgage liens. It is the exception and not the rule that such priority of liens can be displaced. We emphasize this fact of the sacredness of contract liens, for the reason that there seems to be growing an idea that the chancellor, in the exercise of his equitable powers, has unlimited discretion in this matter of the displacement of vested liens."

Again, in *Morgan's Company v. Texas Pacific R'y Co.*, 137 U. S., p. 197, the Supreme Court limits and defines the doctrine established by *Fosdick v. Schall*, as follows: "The property being in the hands of the court for administration as a trust fund for the payment of incumbrances, the court, in putting it in condition for sale, may, if needed, recognize the claims of materialmen and laborers, and some few others of similar nature, accruing for a brief period prior to its intervention, where current earnings have been used by the company to pay mortgage debt or improve the property, instead of to pay current expenses, under circumstances raising an equity for their restoration."

There must be a diversion of the income that will require a restitution of the amount diverted to current expenses. In this case no diversion could have taken place which could raise any estoppel, either express or implied, against the bondholders. The income that was diverted was the income received by the Richmond & Danville Railroad Company and retained by them. Suppose there had been no income, and the Richmond & Danville railroad had paid interest to bondholders, would any estoppel have arisen which would require bondholders to have the income of the road after the receivership diverted to pay for materials furnished for operating the railroad?

The amounts used by the receivers in the improvement of the road were a deduction from net income arising during receivership. This income was clearly mortgaged to bondholders, and they are entitled to it. If any amount went to the improvement of the corpus it was no diversion of income from which intervenors' claims were equitably to be paid. The only income that ever intervenors could

claim was the income arising before the appointment of receivers, and there is no proof that any such income went to make improvements.

LAWTON & CUNNINGHAM,
MARION ERWIN,

*Solicitors for H. M. Comer and R. S. Hayes, Receivers of the
Central Railroad & Banking Company of Georgia.*

LAWTON & CUNNINGHAM,

*Solicitors for the Central Railroad &
Banking Company of Georgia.*

TURNER, McCLURE & ROLSTON,

MERCER & MERCER,

Solicitors for Farmers' Loan & Trust Company.

BUTLER, STILLMAN & HUBBARD,

HENRY B. TOMPKINS,

Solicitors for Central Trust Company.

384 United States Circuit Court of Appeals, Fifth Circuit,
November Term, 1894.

(Extract from Minutes.)

TUESDAY, June 4, 1895.

THE VIRGINIA AND ALABAMA COAL COMPANY

v.

THE CENTRAL RAILROAD AND BANKING COMPANY OF GEORGIA
et al.

Ordered that the petition for rehearing filed in this cause on the 30th of April, 1895, be, and the same is hereby, refused.

385

Opinion.

United States Circuit Court of Appeals, Fifth Circuit, November
Term, 1894.

(Filed February 25, 1895.)

THE VIRGINIA AND ALABAMA COAL COMPANY

v.

THE CENTRAL RAILROAD AND BANKING COMPANY OF
GEORGIA *et al.*

No. 319.

Appeal from the United States circuit —, eastern division, southern
district of Georgia.

Before Pardee and McCormick, circuit judges, and Toulmin, district
judge.

Statement of the Case.

This is a suit brought by intervention for coal furnished by the
intervenor The Virginia & Alabama Coal Company and the

386 Sloss Iron and Steel Company for the operation of the Central Railroad and Banking Company of Georgia while being operated by the Richmond and Danville Railroad Company. All the coal charged for as furnished before the appointment of receivers for the Central Railroad Company was furnished within less than six months prior to such appointment.

The Central railroad was leased to the Georgia Pacific Railroad Company, the Georgia Pacific was leased to the Richmond and Danville Railroad Company, and the latter company, under color of this lease, was operating the Central Railroad lines.

On June 1st, 1891, the Central was leased to the Georgia Pacific Railroad Company, and on the same day the Richmond and Danville (to which the Georgia Pacific was already leased) went into the possession of the Central and operated the same till March 4th, 1892, at which date the receivers of the Central were appointed.

The lease transferred not only the main lines of the Central, but various lines which it controlled by lease and by stock ownership. It further provided that the lessees should take possession of the leased property as a running road, taking such cash and credits as were then due, and, on the other hand, obligating the lessees to pay the current debts of the lessor company for supplies, etc.

The lease also provided that the lessee should pay the interest on the bonds and debentures of the Central and of the lines upon which the Central had guaranteed interest on bonds, and also dividends on the stock of the Central.

387 It appears from the agreed statement of facts that the semi-annual interest on the five million dollars of mortgage bonds of the Central was paid in January, 1892 (the order appointing the receiver being dated March 4th, 1892). It is also an agreed fact that during the receivership the Central expended for betterments on its railroad lines from the income of the roads during the receivership a sum much larger than the entire claim of the intervenors.

To set aside the lease Mrs. Rowena M. Clarke, a stockholder, brought her bill against the Central railroad, under which a receiver was appointed March 4th, 1892. The Richmond & Danville and Georgia Pacific Co's disclaimed any rights under the lease, and no issue was raised in relation thereto such as to require decision as to the validity or invalidity of the lease, and such question has not been determined. Shortly afterwards the Central railroad filed a dependent bill, under which the same receivership was continued, and under which it was also extended to the Port Royal & Augusta railroad and the Port Royal & Western Carolina railroad. The Farmers' Loan and Trust Company, the trustee for the mortgage bondholders of the Central railroad, afterwards filed its dependent bill in said cases, under which the same receivership was continued. All these cases were afterwards consolidated.

On July 13th, 1891, a contract was made with the Virginia Company for the purchase of a year's supply of coal to operate
388 the Central lines. The contract stipulated for 90 cents per ton of 2,000 lbs., to be delivered on cars at the mines and to be shipped at times and in quantities to suit.

In pursuance of this contract the Virginia Company, between September 16th, 1891, and March 4th, 1892, shipped to the division superintendents (Curran at Macon, Dill at Savannah, and Epperson at Augusta) coal to the amount (per contract price of 90 cents per ton) of \$26,607.44. The Sloss Company, under the same contract, by the consent of both parties, supplied coal to the amount of \$14,359.38, but at an agreed price of 95 cents a ton. All bills were made out in the name of the Central Company. The price at which the Central railroad got the coal was 7 or 8 cents per ton less than the market price at that time.

It appears that while much of the coal was used in the operation of the Central railroad prior to the receivership, a large part of the coal delivered was in its bins at the time of the appointment of the receivers, on March 4th, 1892, and went into their possession and was used by them, and that some of the coal was received after that time and likewise went into the possession of the receivers.

An agreement of counsel is found in the record as follows: "It is agreed that the coal described in the exhibit to the intervention by amounts and dates of shipment was delivered by the intervenor to the railroad lines of the Central Railroad and Banking Company of Georgia, which was being operated by the Richmond and Danville Railroad Company till the 4th of March last, 389 at the dates and in the amounts shown by said exhibits." It, however, appears that some of the coal delivered to the Central railroad was used by several other railroads, known as the Port Royal and Augusta, the Port Royal & Western Carolina, and the Charlotte, Columbia and Augusta railroads. The master's report finds that coal of the Virginia Company worth \$13,735.89 was used prior to the receivership; that coal worth \$6,700.50 was on the bins at the time of the appointment of the receiver, and that coal worth \$6,171.30 was received by the receiver after his appointment; and that of the coal of the Sloss Company, coal worth \$10,320.17 was used prior to the appointment of the receiver; that coal worth \$3,818.00 was on the bins March 4th, 1892, and that coal worth \$776.00 arrived after the appointment of the receivers. The circuit court held the Central railroad and the receivers liable only to the extent of the coal which was delivered after March 4th, 1892 (holding them liable at the contract price), and rendered a decree accordingly. From that decree the intervenors appeal.

TOULMIN, district judge (after stating the case as above), delivered the opinion of the court:

From what appears in the record, we are satisfied that the 390 debts claimed by the intervenors for coal delivered prior to the appointment of the receivers were current debts for operating expenses of the Central railroad lines, made in the ordinary course of business, to be paid out of the current earnings. The coal was purchased in the name of the Central railroad. It was delivered on its lines and was furnished for their operation, and, with the exception of a small amount, was used by them. There was evidence that the contract for the purchase of the coal was

made by the Central railroad, and the master so found. The circuit court, however, differed with and overruled the master in such finding.

In our view of the case it makes no difference whether the contract for the purchase of the coal was made by the Central railroad or by the Richmond and Danville railroad. The coal was delivered on the lines of the Central railroad and was furnished for and used in their operation. The Richmond and Danville Railroad Company had the possession of the Central railroad lines; was operating them, collecting their revenues, and was under the obligation to pay out of their earnings the current expenses and the interest on their bonds. But whether that possession was lawful or otherwise, or whatever the relations between the two railroads may have been, we think that the Central railroad was liable for the necessary supplies furnished and used for the purpose of keeping its road in successful operation and carrying on its business as a common carrier.

Such debts are preferential, and the persons to whom they 391 are due are entitled to have the income of the receivership used in payment of them, as the railroad company would have been bound in equity and good conscience to use it if no change in the possession of the property had been made.

Farmers' Loan & Trust Co. v. Kansas City W. & N. W. R. Co., 53 Fed. Rep., 182.

Burham v. Brown, 111 U. S., 176.

Fosdick v. Schall, 99 U. S., 235.

In this case the equities are especially favorable to the intervenors; for it appears that there was a diversion of the income for the payment of interest on bonds of the Central railroad in January, 1892, some two months before the receivers were appointed; and it also appears that the receivers expended from the income for improvements on the railroad property a sum much larger than the claims of the intervenors.

Our opinion is that the receivers are liable not only for the coal which they received, after their appointment, from unloaded cars, but that they are equally liable for the coal which was in the bins at the date of their appointment, and which they took possession of and used in the operation of the Central railroad lines, and that as representatives of the Central Railroad and Banking Company of Georgia they are also liable for the coal delivered to and used by the Central railroad lines prior to their appointment, and which was then unpaid for.

For that portion of the coal used at Augusta by the three rail- 392 roads mentioned, as shown by the evidence, the Central railroad and the receivers are liable, except as to that used by the Charlotte, Columbia & Augusta railroad. It appears that the other roads mentioned were under the control of the Central railroad and were a part of its system. The Charlotte, Columbia & Augusta railroad was not.

It does not appear that the court in appointing the receivers made any provision for the payment of the intervenors' claims,

but as there is evidence in the record showing that current earnings, before the receivers were appointed, were diverted to paying interest on the bonded debt, and that after their appointment they made large permanent improvements on the railroad property, the intervenors should be allowed payment of their claims from the corpus of the property should the earnings in the hands of the receivers be insufficient to pay them.

The intervenors are only allowed the price stipulated for and which they expected to receive when the coal was delivered, and which is in fact the price claimed in their petition of intervention.

In our opinion, the view which the circuit court took of this case was an erroneous one and the decree must be reversed, and the case is remanded to the circuit court with instructions to enter a decree in favor of the intervenors for the amounts respectively due them for coal delivered to the lines under the control and forming a part

of the system of the Central Railroad and Banking Company of Georgia, as shown by the evidence in this case, including the coal furnished before the appointment of the receivers and that found in the bins at the time of such appointment and of which the receivers took possession, as well as the coal delivered to the receivers after their appointment, the amount due being determined by the contract price, and an order that they recover from the Central Railroad and Banking Company of Georgia and the receivers of the same such sums thus found to be due. No decree will be entered in favor of the intervenors for the payment of that portion of the coal which was used by the Charlotte, Columbia and Augusta Railroad Company.

394 United States Circuit Court of Appeals for the Fifth Circuit.

I, J. M. McKee, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing 394 pages, numbered from 0 to 393, inclusive, contain a true copy of the record, pleas, process, proceedings, and all papers in the case of The Virginia and Alabama Coal Company, on its own behalf and for use of Sloss Iron and Steel Company, *v.* The Central Railroad and Banking Company of Georgia *et al.*, No. 319, as the same remains upon the files and records of said United States circuit court of appeals.

Seal United States Circuit
Court of Appeals, Fifth
Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of New Orleans, this 29 day of November, A. D. 1895.

J. M. McKEE,

Clerk of the United States Circuit Court of Appeals
for the Fifth Circuit.

395 UNITED STATES OF AMERICA, ss.:

The President of the United States of America to the honorable the judges of the United States circuit court of appeals for the fifth circuit, Greeting:

[Seal of the Supreme Court of the United States.]

Being informed that there is now pending before you a suit in which The Virginia & Alabama Coal Company, suing in its own behalf and for the use of the Sloss Iron and Steel Company, is appellant and The Central Railroad and Banking Company of Georgia *et al.* are appellees, which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the southern district of Georgia, and we, being willing for certain reasons that the said cause and the record and proceedings therein should be certified by the said circuit court of

396 appeals and removed into the Supreme Court of the United States, do hereby command you that you send without delay to the said Supreme Court as aforesaid the record and proceedings in said cause, so that the said Supreme Court may act thereon as of right and according to law ought to be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 21st day of January, in the year of our Lord one thousand eight hundred and ninety-six.

JAMES H. McKENNEY,

Clerk of the Supreme Court of the United States.

397 [Endorsed:] Supreme Court of the United States. No. 848. October term, 1895. The Virginia & Alabama Coal Company, &c., vs. The Central Railroad & Banking Co. of Georgia *et al.* Writ of certiorari.

United States Circuit Court of Appeals, Fifth Circuit.

In answer to the within writ of certiorari, a certified copy of an agreement of counsel filed in said cause on this 3rd day of February, 1896, is hereto annexed and made part of this return, and as therein stipulated the certified transcript of the cause named in this writ, now on file in the office of the clerk of the Supreme Court of the United States, is here referred to as a full answer to said writ of certiorari. By direction of the judges of the circuit court of appeals.

Given under my hand and the seal of

Seal United States Circuit Court of Appeals, Fifth Circuit. said United States circuit court of appeals for the fifth circuit, this February 3, 1896.

JAMES M. McKEE,

Clerk of the United States Circuit Court of Appeals for the Fifth Circuit.

398 United States Circuit Court of Appeals for the Fifth Circuit.

VIRGINIA AND ALABAMA COAL COMPANY <i>et al.</i> , Appellants,	}
<i>vs.</i>	
THE CENTRAL RAILROAD & BANKING COMPANY OF GEORGIA <i>et al.</i> , Appellees.	

Whereas, on the twenty-first day of January, 1896, the Supreme Court of the United States granted a writ of certiorari whereby it directed the honorable the judges of the United States circuit court of appeals for the fifth circuit to send up the record and proceedings in the suit in which The Virginia and Alabama Coal Company, suing in its own behalf and for the use of the Sloss Iron and Steel Company, is appellant and The Central Railroad and Banking Company of Georgia and others are appellees, which suit was removed into the said circuit court of appeals by virtue of an appeal from the circuit court of the United States for the southern district of Georgia; and

Whereas, in the application for the writ of certiorari in said cause, a certified copy of the transcript of the record in said circuit court of appeals was transmitted to the Supreme Court of the United States and now is of file there; and

Whereas, the practice of the said Supreme Court of the United States permits the parties, for the purpose of avoiding the
399 cost of an additional certified transcript of the record, to enter into a stipulation agreeing that the transcript now on file in the Supreme Court should be used instead of having another transcript of the same record made:

Now, then, it is agreed and stipulated between the parties to said cause that it shall be unnecessary for the said United States circuit court of appeals, in making return to said writ of certiorari, to certify another copy of the record in said cause to the Supreme Court of the United States, but the certified copy of the record now of file in said Supreme Court of the United States may be taken and used with the same effect as if certified and attached to the return required to be made to said writ of certiorari, and that said United States circuit court of appeals in making return to said writ of certiorari shall send a certified copy of this stipulation to said Supreme Court of the United States in its answer to said writ.

January 28, 1896.

(Signed)

WALTER B. HILL,

HILL, HARRIS & BIRCH,

Solicitors for the Appellants.

MERCER & MERCER,

Solicitors for Farmers' Loan & Trust Co.

LAWTON & CUNNINGHAM,

Solicitors for Central R. R. & B'g Co. of Ga. et al.

CENTRAL TRUST CO. OF N. Y.,

By HENRY B. TOMPKINS, *Sols.*

400 United States Circuit Court of Appeals for the Fifth Circuit.

I, J. M. McKee, clerk of the United States circuit court of appeals for the fifth circuit, do hereby certify that the foregoing two pages, numbered from 1 to 2, inclusive, contain a true copy of the *an* agreement of counsel filed in the case of Virginia and Alabama Coal Company *et als.* vs. The Central Trust and Banking Company of Georgia *et als.* as the same remains upon the files and records of said United States circuit court of appeals, No. —.

Seal United States Circuit Court of Appeals,
Fifth Circuit.

In testimony whereof I hereunto subscribe my name and affix the seal of said United States circuit court of appeals, at the city of New Orleans, this 3rd day of February, A. D. 1896.

J. M. McKEE,

*Clerk of the United States Circuit Court of
Appeals for the Fifth Circuit.*

[Endorsed:] Case No. 15,133. Supreme Court U. S., October term, 1897. Term No., 100. The Virginia and Alabama Coal Co., &c., app'ts, vs. The Central Railroad & Banking Company *et al.* Writ of certiorari and return. Filed February 6, 1896.



FILED 102
JAN 13 1896

JAMES H. MCKENNEY,
CLERK

In the Supreme Court of the United States.

OCTOBER TERM, 1895.

No. ~~848~~ ~~XIX~~ 100.

ROWENA M. CLARKE ET AL.,

vs.

THE CENTRAL R. R. AND BANKING
CO. OF GEORGIA ET AL.

Bill, Dependent Bills, &c:

THE CENTRAL R. R. AND BANKING
CO. OF GEORGIA

vs.

THE FARMERS LOAN AND TRUST
CO. OF NEW YORK ET AL.

Intervention of the
Virginia & Alabama Coal
Co. and Sloss Iron and
Steel Company.

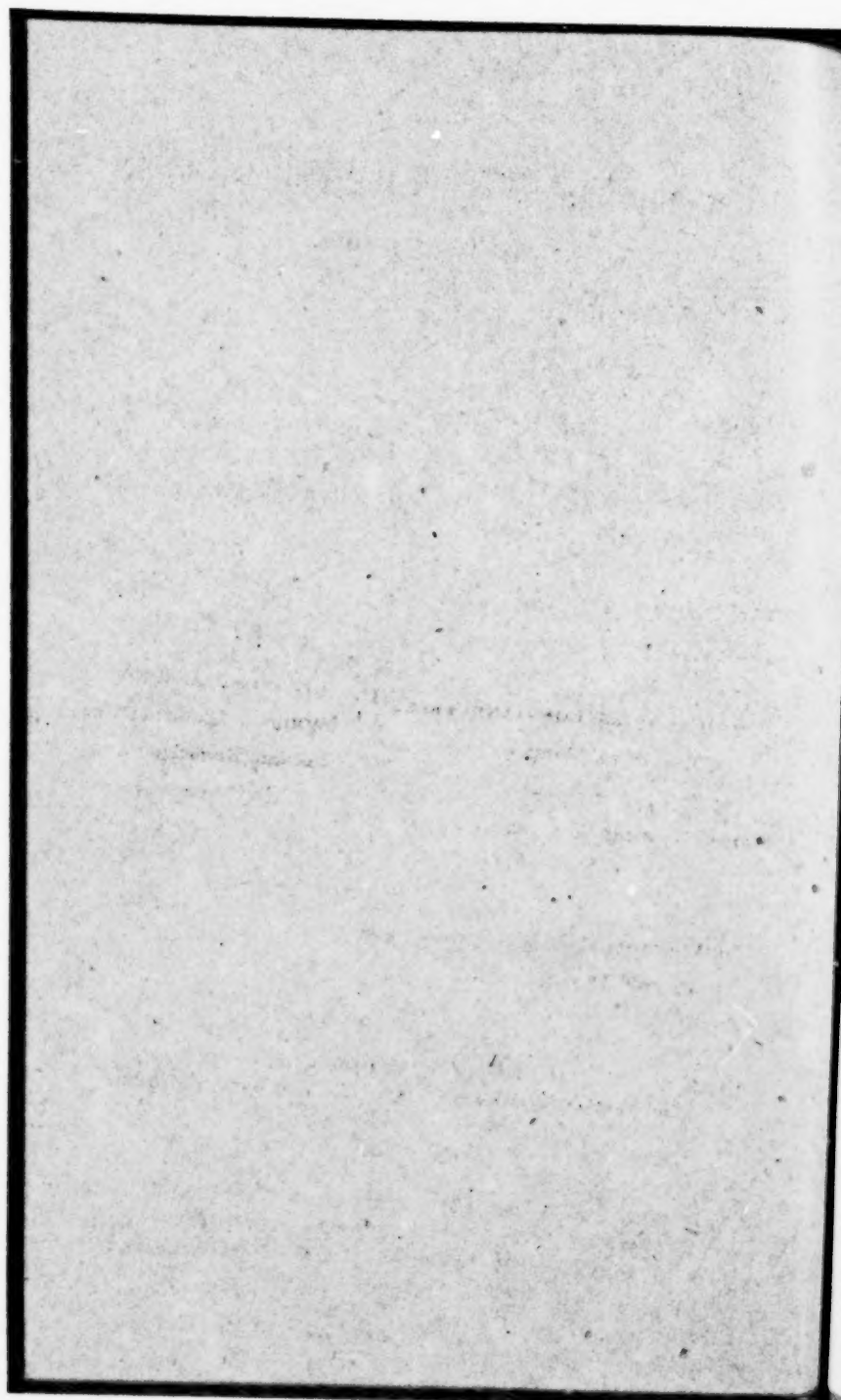
THE FARMERS LOAN AND TRUST
CO. OF NEW YORK

vs.

THE CENTRAL R. R. AND BANKING
CO. OF GEORGIA ET AL.

*Petition of Central Railroad & Banking Company of Georgia et al.
for Certiorari from Decree of Circuit Court of Appeals
for the Fifth Circuit.*

LAWTON & CUNNINGHAM, MARION ERWIN, TURNER, MCCLURE &
RALSTON, MERCER & MERCER, BUTLER, STILLMAN &
HUBBARD, H. B. TOMPKINS, *Solicitors for Petitioners.*



To the Honorable the Judges of the Supreme Court of the
United States:

ROWENA M. CLARKE ET AL.,

vs.

THE CENTRAL R. R. AND BANKING
CO. OF GEORGIA ET AL.

Bill, Dependent Bills, &c.

THE CENTRAL R. R. AND BANKING
CO. OF GEORGIA ET AL.

vs.

THE FARMERS LOAN AND TRUST
CO. OF NEW YORK ET AL.

Intervention of the
Virginia & Alabama Coal
Co. and Sloss Iron and
Steel Company.

THE FARMERS LOAN AND TRUST
CO. OF NEW YORK

vs.

THE CENTRAL R. R. AND BANKING
CO. OF GEORGIA ET AL.

Petition for *Certiorari*.

The petition of the Central Railroad & Banking Company of Georgia, and of H. M. Comer and R. Somers Hayes, Receivers of the same, and of The Farmers Loan & Trust Company of New York, Trustee, and of the Central Trust Company of New York, Trustee, respectfully show and aver as follows:

That at the November Term, 1894, of the Circuit Court of Appeals of the United States for the Fifth Circuit, there came on to be heard in that Court the appeal of the Virginia & Alabama Coal Company, suing by intervention for itself and for use of the Sloss Iron and Steel Company, from a decree rendered by the Circuit Court of the United States for the Southern District

of Georgia, in the above stated consolidated causes, and that at said Term, to-wit: on February 25th, 1895, the said Circuit Court of Appeals delivered its opinion in said cause, a certified copy of which is hereto attached as Exhibit A, and entered judgment in accordance therewith reversing the said decree of the Circuit Court, and directing a decree to be entered by the said Circuit Court in accordance with said opinion of the said Circuit Court of Appeals against your petitioners for over \$40,000, and petitioners applied for a rehearing in said Court which was refused on June 4th, 1895. Petitioners aver that while in and by the said opinion and judgment said Circuit Court of Appeals has committed manifest error, in a matter involving a considerable amount in the particular intervention in which the judgment is rendered, yet this expresses but a very small part of the results of the judgment as it affects these petitioners, as there are numerous other intervening petitions and proceedings pending in the main cause of similar character amounting to several hundred thousand dollars, seeking to subject the trust property in the hands of the Receivers of the Central Railroad & Banking Company of Georgia to their payment, the proper disposition of which turn upon a correct decision of the same legal question involved in this cause, and a review of which on *certiorari* is sought by this petition.

Your petitioners further show and aver that the Supreme Court of the United States, as they are advised by counsel, has never in any case yet directly passed upon the matter of law making the distinguishing feature of this cause and controlling its correct decision, nor have any of the lower Courts passed upon the same other than the Circuit Court and the Circuit of Appeals through which Courts this cause has passed, and which have each reached a different conclusion.

That the solicitor of your petitioner was present in the Circuit Court of Appeals at the time of the delivery of the opinion aforesaid and requested that the Court would certify the legal proposition involved in the application of the rule in Fosdick's case, to the case of these petitioners as made by the record, to the Supreme Court of the United States, but the said Circuit Court of Appeals through the presiding Circuit Judge declined to so certify the cause and informed petitioners' solicitor that the only method left open to petitioners for a review of the cause by the Supreme Court would be an application for *certiorari*.

Your petitioners further show that in the opinion delivered, the Circuit Court of Appeals did not disturb the findings of fact made by the Court below, and but one question or matter of law was decided differently from the judgment and decree of said Circuit Court which was reversed, and that was that the principle commonly known as the rule in Fosdick's case (99 United States, p. 235), is applicable to the facts in the present case. And the Circuit Court of Appeals having placed its decision entirely upon the application of that rule, the sole question which should control this Court in deciding whether the writ of *certiorari* should issue on this petition, is the validity of the decision on the point, and the general importance of the question.

That is to say the Circuit Court of Appeals ruled that where a railroad company leases its railroad lines to another railroad company and debts for supplies and operating expenses are contracted by the lessee company, that upon an abrogation or termination of the lease and the unconditional surrender of the leased road by the lessee, and the appointment of Receivers of the lessor company, that the rule in Fosdick's case applies, and that the debts contracted by the lessee in the operation of the road becomes debts of the lessor and are chargeable upon the Receivers of the lessor company under the rule in Fosdick's case precisely as if it were a receivership of the railroad company contracting the supply debts.

A succinct statement of the facts and issues in the case as presented to the Circuit Court of Appeals is hereto attached as Exhibit B, and made a part of this petition. A printed copy of the transcript of the record filed in the Court of Appeals, together with the briefs of solicitors for both parties, is filed herewith as Exhibit C.

Your petitioners contend that where a railroad company takes a lease of a railroad from another company, and contracts debts for the operation of its railroad system and the *lessee* company is placed in the hands of a Receiver, that the earnings of the receivership and all the property of the lessee company including its *leasehold* interest in the property of the lessor may very properly be chargeable with the supply debts under the rule in Fosdick's case, but that such charge affects only the leasehold interest of the lessee which contracted such indebtedness and in no manner becomes a charge upon the lessor.

And they further contend that where, as in the case at bar, the lease was abrogated and unconditionally surrendered by the lessee, and the road unconditionally withdrawn from the system of the lessee company, and a Receiver was appointed, not for the lessee company but for the lessor, under no recognized rule of law can the debts created by the lessee become chargeable to the lessor or its Receivers. And petitioners aver that in deciding that the lessor is so chargeable the said Circuit Court of Appeals has committed manifest error to the great injury of these petitioners.

Petitioners show to the Court that outside of the importance which attaches to the question in relation to the interests of these petitioners, the question is one of vast importance to the railroad interests of the entire country. The principle now laid down and announced by the Circuit Court of Appeals for the Fifth Circuit as a rule of decision for all the subordinate Courts for so large a portion of the United States is one of far-reaching effect. It is now for the first time laid down as a rule that when a railroad company leases its road to another company it does so with the understanding that upon the abrogation or termination of the lease the entire supply indebtedness and operation expenses of the lessee company which it may through accident or design leave unpaid becomes a charge and lean upon the property of the lessor company. If this rule has been improperly laid down by the Court of Appeals in the case at bar as your petitioners contend, the amount of litigation that will spring out of following or departing from the rule by the various Courts of the country in the vast amount of railroad litigation now before them, and the injustice which will be done to lessor or lessee interest as the case may be, in the forced reorganization of such properties now taking place through the Courts of the country, and the importance of settling so important a question correctly at this juncture when through leases and otherwise the great trunk lines of the country are being evolved, raises the question involved in the case at bar to a degree of general importance which should in the opinion of your petitioners demand from the Supreme Court its review on *certiorari*.

Wherefore petitioners pray that this Honorable Court will grant unto your petitioners the Court's writ of *certiorari* directed to said Circuit Court of Appeals, and requiring that the record of said intervention cause in said Circuit Court of Appeals be

certified to this Court, and that this Honorable Court will then proceed to correct the errors complained of and give to your petitioners such other relief as the nature of their case may require and to the Court may seem appropriate.

Lawson, Birmingham, Marign Ensign
Sols for C. R. & B. Co. of Ga and
for Comer & Hayes Receivers of same
Turner, McClure & Ralston, Mercantile
Sols. for Farmers Loan & Trust Co. Trustee.
Butler, Stillman & Hubbard, H. B. Tompkins
Sols for Central Trust Co. of New York,
Trustee.

SOUTHERN DISTRICT OF GEORGIA—S. S.

Before the undersigned personally comes Hugh M. Comer, President of the Central Railroad and Banking Company of Georgia, and one of the Receivers of the same, who, being duly sworn, deposes and says that the facts stated in the foregoing petition for *certiorari* so far as they relate to his own acts and deeds are true, and so far as they relate to the acts and deeds of others he believes the same to be true.

Sworn to and subscribed before me this day of,
1895.

EXHIBIT A.OPINION OF UNITED STATES CIRCUIT COURT OF
APPEALS,

FIFTH CIRCUIT—NOVEMBER TERM, 1895.

(Filed February 25, 1895.)

ROWENA M. CLARKE, ET AL.,

vs.

THE CENTRAL R. R. AND BANKING
CO. OF GEORGIA ET AL.

Bill, Dependent Bills, &c.

THE CENTRAL R. R. AND BANKING
CO. OF GEORGIA

vs.

THE FARMERS LOAN AND TRUST
CO. OF NEW YORK ET AL.

No. 319.

THE FARMERS LOAN AND TRUST
CO. OF NEW YORK

vs.

THE CENTRAL R. R. AND BANKING
CO. OF GEORGIA ET AL.Intervention of the
Virginia & Alabama Coal
Co. and Sloss Iron and
Steel Company.Appeal from the United States Circuit, Eastern Division,
Southern District of Georgia.Before Pardee and McCormick, Circuit Judges, and Toulmin,
District Judge.

STATEMENT OF THE CASE.

TOULMIN, J.

This is a suit brought by intervention for coal furnished by the intervenors, the Virginia and Alabama Coal Company, and the Sloss Iron and Steel Company, for the operation of the Central Railroad and Banking Company, of Georgia, while being operated by the Richmond and Danville Railroad Company. All the coal charged for as furnished before the appointment of receivers for the Central Railroad Company was furnished within less than six months prior to such appointment.

The Central Railroad was leased to the Georgia Pacific Railroad Company; the Georgia Pacific was leased to the Richmond and Danville Railroad Company, the latter company under color of this lease was operating the Central Railroad lines.

On June 1st, 1891, the Central was leased to the Georgia Pacific Railroad Company; and on the same day the Richmond and Danville (to which the Georgia Pacific was already leased) went into the possession of the Central and operated the same till March 4th, 1892, at which date the Receivers of the Central were appointed.

The lease transferred not only the main lines of the Central, but various lines which it controlled by lease and by stock ownership. It further provided that the lessees should take possession of the leased property as a running road, taking such cash and credits as were then due, and on the other hand obligating the lessees to pay the current debts of the lessor company for supplies, etc.

The lease also provided that the lessee should pay the interest on the bonds and debentures of the Central and of the lines upon which the Central had guaranteed interest on bonds, and also dividends on the stock of the Central.

It appears from the agreed statement of facts that the semi-annual interest on the five million dollars of mortgage bonds of the Central was paid in January, 1892, (the order appointing the Receivers being dated March 4th, 1892.) It is also an agreed fact that during the receivership the Central expended for betterments on its railroad lines from the income of the roads during the receivership, a sum much larger than the entire claim of the intervenors.

To set aside the lease, Mrs. Rowena M. Clarke, a stockholder, brought her bill against the Central Railroad, under which a Receiver was appointed March 4th, 1892. The Richmond & Danville and Georgia Pacific Companies disclaimed any rights under the lease, and no issue was raised in relation thereto, such as to require decision as to the validity or invalidity of the lease; and such question has not been determined. Shortly afterwards the Central Railroad filed a dependent bill, under which the same Receivership was continued, and under which it was also extended to the Port Royal & Augusta Railroad, and the Port Royal & Western Carolina Railroad. The Farmers Loan and Trust Company, the trustee for the mortgage bondholders of the Central Railroad afterwards filed its dependent bill in said cases under which the same Receivership was continued. All these cases were afterwards consolidated.

On July 13th, 1891, a contract was made with the Virginia Company for the purchase of a year's supply of coal to operate the Central lines. The contract stipulated for 90 cents per ton of 2,000 pounds, to be delivered on cars at the mines and to be shipped at times and in quantities to suit.

In pursuance of this contract the Virginia Company, between September 16th, 1891, and March 4th, 1892, shipped to the Division Superintendents (Curran, at Macon; Dill, at Savannah, and Epperson, at Augusta,) coal to the amount (per contract price of 90 cents per ton) of \$26,607.44. The Sloss Company, under the same contract, by the consent of both parties, supplied coal to the amount of \$14,359.38, but at an agreed price of 95 cents a ton. All bills were made out in the name of the Central Company. The price at which the Central Railroad got the coal was 7 or 8 cents per ton less than the market price at that time.

It appears that while much of the coal was used in the operation of the Central Railroad prior to the Receivership, a large part of the coal delivered was in its bins at the time of the appointment of the Receivers, on March 4th, 1892, and went into their possession and was used by them, and that some of the coal was received after that time and likewise went into the possession of the Receivers.

An agreement of counsel is found in the record, as follows: "It is agreed that the coal described in the exhibit to the intervention by amounts and dates of shipment was delivered by

the intervenor to the railroad lines of the Central Railroad & Banking Company of Georgia, which was being operated by the Richmond and Danville Railroad Company till the 4th of March last, at the dates and in the amounts shown by said exhibits." It, however, appears that some of the coal delivered to the Central Railroad was used by several other railroads known as the Port Royal and Augusta, the Port Royal & Eastern Carolina, and the Charlotte, Columbia and Augusta Railroads. The Master's report finds that coal of the Virginia Company, worth \$13,735.89, was used prior to the Receivership; that coal worth \$6,700.50 was on the bins at the time of the appointment of the Receiver; and that coal worth \$6,171.30 was received by the Receiver after his appointment; and that of the coal of the Sloss Company, coal worth \$10,320.17 was used prior to the appointment of the Receiver; that coal worth \$3,818.00 was on the bins March 4th, 1892, and that coal worth \$776 arrived after the appointment of the Receivers. The Circuit Court held the Central Railroad and the Receivers liable only to the extent of the coal which was delivered after March 4th, 1892, (holding them liable at the contract price) and rendered a decree accordingly. From that decree the intervenors appeal.

Toulmin, District Judge, (after stating the case as above) delivered the opinion of the Court:

From what appears in the record we are satisfied that the debts claimed by the intervenors for coal delivered prior to the appointment of the Receivers, were current debts for operating expenses of the Central Railroad lines, made in the ordinary course of business, to be paid out of the current earnings. The coal was purchased in the name of the Central Railroad. It was delivered on its lines, and was furnished for their operation, and, with the exception of a small amount, was used by them. There was evidence that the contract for the purchase of the coal was made by the Central Railroad, and the Master so found. The Circuit Court, however, differed with and overruled the Master in such finding.

In our view of the case it makes no difference whether the contract for the purchase of the coal was made by the Central Railroad or by the Richmond & Danville Railroad. The coal was delivered on the lines of the Central Railroad, and was furnished for and used in their operation. The Richmond & Danville

Railroad Company had the possession of the Central Railroad lines; was operating them, collecting their revenues, and was under the obligation to pay out of their earnings the current expenses and the interest on their bonds. But whether that possession was lawful or otherwise, or whatever the relations between the two railroads may have been, we think that the Central Railroad was liable for the necessary supplies furnished and used for the purpose of keeping its road in successful operation, and carrying on its business as a common carrier. Such debts are preferential and the persons to whom they are due are entitled to have the income of the Receivership used in payment of them as the railroad company would have been bound in equity and good conscience to use it, if no change in the possession of the property had been made.

Farmers Loan and Trust Co. v. Kansas City W. & N. W. R. Co., 53 Fed. Rep., 182.

Burham v. Brown, 111 U. S., 176.

Fosdick v. Schall, 99 U. S., 235.

In this case the equities are especially favorable to the intervenors. For it appears that there was a diversion of the income for the payment of interest on bonds of the Central Railroad in January, 1892, some two months before the Receivers were appointed; and it also appears that the Receiver expended *from the income* for improvements on the railroad property a sum much larger than the claims of the intervenors.

Our opinion is that the Receivers are liable not only for the coal which they received after their appointment from unloaded cars, but that they are equally liable for the coal which was in the bins at the date of their appointment, and which they took possession of and used in the operation of the Central Railroad lines, and that as representatives of the Central Railroad & Banking Company of Georgia they are also liable for the coal delivered to and used by the Central Railroad lines prior to their appointment, and which was then unpaid for.

For that portion of the coal used at Augusta by the three railroads mentioned, as shown by the evidence, the Central Railroad and Receivers are liable, except as to that used by the Charlotte, Columbia & Augusta Railroad. It appears that the other roads mentioned were under the control of the Central Railroad, and were a part of its system. The Charlotte, Columbia & Augusta Railroad was not.

It does not appear that the court in appointing the Receivers made any provision for the payment of the intervenors' claims, but as there is evidence in the record showing that current earnings, before the Receivers were appointed, were diverted to paying interest on the bonded debt, and that after their appointment they made large permanent improvements on the railroad property, the intervenors should be allowed payment of their claims from the *corpus* of the property, should the earnings in the hands of the Receivers be insufficient to pay them.

The intervenors are only allowed the price stipulated for, and which they expected to receive when the coal was delivered, and which is in fact the price claimed in their petition of intervention.

In our opinion the view which the Circuit Court took of this case was an erroneous one, and the decree must be reversed, and the case is remanded to the Circuit Court with instructions to enter a decree in favor of the intervenors for the amounts respectively due them for coal delivered to the lines under the control, and forming a part of the system of the Central Railroad & Banking Company of Georgia, as shown by the evidence in this case, including the coal furnished before the appointment of the Receivers, and that found in the bins at the time of such appointment, and of which the Receivers took possession, as well as the coal delivered to the Receivers after their appointment, the amount due being determined by the contract price; and an order that they recover from the Central Railroad & Banking Company of Georgia and the Receivers of the same such sums thus found to be due. No decree will be entered in favor of the intervenors for the payment of that portion of the coal which was used by the Charlotte, Columbia & Augusta Railroad Company.

A true copy.

Attest.

J. M. McKEE,
Clerk.

EXHIBIT B.**STATEMENT OF THE CASE**

AS PRESENTED IN THE CIRCUIT COURT OF APPEALS.

(1.) On June 1st, 1891, the Central Railroad and Banking Company of Georgia, hereinafter designated as the Central Company for brevity, entered into a contract of lease with the Georgia Pacific Railway Company, whereby the lines of railroad owned by the former as well as lines controlled through leases by the former, were leased to the latter for ninety-nine years. The contract also provided that the Georgia Pacific Company should have the control of the voting power of all the stocks owned by the Central Company in certain other subordinate railroad companies.

(2.) The following subordinate railroad lines were at the time of the lease of the Georgia Pacific Company, controlled by the Central Company by lease: The Southwestern Railroad; the Augusta & Savannah Railroad; the Eatonton Branch Railroad; the Mobile & Girard Railroad (printed transcript p. 21).

(3.) The railroad lines of the following subordinate corporations were at the time controlled by the Central Company by virtue of the ownership by the Central Company of all their capital stock: The Savannah & Western Railroad Company; the Montgomery & Eufaula Railway Company; the Savannah & Atlantic Railroad Company (printed transcript, p. 20).

(4.) The Georgia Pacific Railway Company at the time of taking the lease of the Central Company was itself under lease to the Richmond & Danville Railroad Company (printed transcript, p. 1).

(5.) On June 1, 1891, the Richmond & Danville Company went into possession of the railroads previously owned or controlled through lease or stock ownership by the Central Company. This was done under color of the lease to the Georgia Pacific Company (printed transcript, pp. 2 and 243).

(6.) After June 1, 1891, the Central Railroad and Banking Company of Georgia, ceased to operate its railroad lines, and

discharged all of its employees theretofore employed in the operation of said lines of railroad, and in the shops of said company and said Central Company thereafter confined itself exclusively to its banking business in the city of Savannah, and had no other employees except a president and board of directors and attorneys, and such employees as were necessary for its banking business (printed record p. 244).

(7.) It appears from the testimony of J. R. Ryan, vice-president of the Virginia & Alabama Coal Company (printed transcript, pp. 133 and 134) and from the testimony of Thomas Seddon, president of the Sloss Iron & Steel Company (printed transcript, pp. 312 and 313) that just previous to the transaction upon which this suit was brought, a combination in a restraint of trade, and an agreement to create a coal monopoly, was made between the Virginia & Alabama Coal Company, the Sloss Iron & Steel Company, the Corona Coal & Coke Co., the Little Warrior Coal & Coke Company, operating coal mines in the State of Alabama, the Tennessee Coal & Iron Company, operating a coal mine producing the largest output of coal in the state of Tennessee, and with other coal mines in the combination, by reason of geographical situation controlling absolutely the coal supply necessary for the operation of the railroads in Georgia and the Southeast seaboard of the United States.

That said coal mining companies had agreed together that they would not sell the coal produced at their respective mines except to the particular railroad companies allotted to them as their special customers under the agreement between themselves, and that thus competition between the mines would be prevented, and that thus they could force the railroads to pay their own price for coal furnished.

That under the terms of the combination it was agreed that the Richmond & Danville Railroad Company should not be sold any coal by the Virginia & Alabama Coal Company, and should be supplied only by the Sloss Iron & Steel Company. That it was the purpose of the combination to corner the coal supply of the railroads of the Southeast seaboard, and in the language of Mr. Ryan, president of the Virginia & Alabama Coal Company, to "squeeze" them out of a large advance in the price (printed transcript, pp. 133, 134, 312, 313).

(8.) That in pursuance of the combination the Sloss Iron & Steel Company did advance the price of coal to the Rich-

mond & Danville Railroad Company from \$1.05 to \$1.12 per ton (printed transcript, p. 313).

That on or about July 1, 1891, General Manager Green of the Richmond & Danville Railroad Company proposed to the Virginia & Alabama Coal Company to enter into a contract for a supply of coal for the operation of the Central lines of which the Richmond & Danville were then in possession (printed transcript, p. 133). At that time the Virginia & Alabama Coal Company, and Sloss Iron & Steel Company, both knew that the Central Company was not operating its own lines, but that they were being operated by the Richmond & Danville Railroad Company under color of the lease to the Georgia Pacific Company (printed transcript, pp. 135, 307).

In order to cover up from the knowledge of the other members of the combination the fact that his company was selling to the Richmond & Danville Company and thus to obtain the benefits of the combination, and at the same time violate its terms, Vice-President Ryan, of the Virginia & Alabama Coal Company, visited the headquarters of the Richmond & Danville Company, in Washington, D. C., and there, with full notice of the real facts, accepted the statement of Joseph P. Minetree, purchasing agent of the Richmond & Danville Railroad Company that he, Minetree, was purchasing agent of the "Central Railroad" also, (printed transcript, p. 128) as equivalent to an assertion that he was purchasing agent of the Central Railroad and Banking Company of Georgia, and there entered into the contract of July 13, 1891, (printed transcript, p. 48) for the furnishing of 275,000 tons of coal at 90 cents per ton delivered on cars at the mines to the "Central Railroad and Banking Company of Georgia."

(The contract, however, showing on its face that Minetree was acting in making it as purchasing agent of the Richmond & Danville Railroad Company (printed transcript, p. 48). Minetree never was an employe of the Central Railroad and Banking Company (printed transcript, pp. 307, 308, 245).

(9.) Afterwards the Virginia & Alabama Coal Company allowed the Sloss Iron & Steel Company to furnish a portion of the coal under the contract. The two coal companies continued to supply coal under the contract, delivering it "to the Rich-

mond & Danville Company" on cars at the mines until March 4, 1892 (printed transcript, p. 17).

(10.) On March 4, 1892, the Central Railroad and Banking Company was put into the hands of Receivers on a stockholders bill brought by one of its stockholders against it and the Georgia Pacific Railway Company and the Richmond & Danville Railroad Company, in which it was set up that there was no power in the charter of the Central Railroad and Banking Company authorizing it to lease its lines, and that the lease was *ultra vires*, and for this and other reasons wholly void (printed transcript, p. 2). The Georgia Pacific Company and the Richmond & Danville Company at the hearings on rule *nisi* disclaimed all right of possession under the lease to any of the Central's properties.

(11.) While the Central Company was still in the hands of the Receivers appointed under the stockholders bill, the corporation filed a dependent bill, setting up that by reason of the diversion of its earnings by the Richmond & Danville Company during its possession, the Central Company had been forced to make default in the payment of its bonds, and declaring its inability to take possession and operate the properties. The Farmers Loan and Trust Company of New York, Trustee for the mortgagee bondholders of the Central Company, then filed its dependent bill to foreclose a five million dollar mortgage on the principal railroad of the Central Company (printed transcript, p. 15). The Central Trust Company of New York, Trustee for stockholders, afterward filed a bill to foreclose a second mortgage on the same property, given to secure thirteen million dollars of bonds.

(12.) The coal which was delivered by the coal companies to the Richmond & Danville Company at the mines, was by the latter brought into Georgia over the lines it controlled, and for almost the entire distance over lines controlled through the Central's lease (printed transcript, pp. 308, 309).

(13.) The coal shipped from the mines was in the main consigned to Superintendents of the Richmond & Danville Company at points on the lines of the Central Company, but a considerable portion of it was distributed to railroads belonging entirely to the Richmond & Danville Company, and which had never belonged to the Central Company or connected with its

system, and even where unloaded into bins which were controlled by the Richmond & Danville Company through the Central lease, it was the practice of the Richmond & Danville Company to coal its engines running on its original roads as well, out of the same bins (printed transcript, pp. 230, 231).

(14.) Under the terms of the lease to the Georgia Pacific Company, the Richmond & Danville Railroad Company went into possession of the Central Railroad on June 1, 1891, taking it as a "going concern," all supplies of the Central Company, coal in the bins and other material being turned over to the lessee (printed transcript, pp. 29, 37).

(15.) During the possession of the Central Company's lines by the Richmond & Danville Company, the intervenors furnished under the contract of July 13, 1891, large quantities of coal, considerable quantities of which were paid for some \$80,000 by the Richmond & Danville Company before March 4, 1892 (printed transcript, p. 136; also pp. 54 and 55). Other coal companies also furnished coal during that period to the Central lines, being operated by the Richmond & Danville Company. How much was so furnished or how much of it was paid for by the Richmond & Danville Company, is not in proof.

(16.) Of the coal delivered by the Virginia & Alabama Coal Company subsequent to March 4, 1892, the time of the appointment of the Receivers of the Central Railroad and Banking Company, the following amounts were taken from the cars and used directly or indirectly by said Receivers:

6,857.75 tons at 90 cents. \$6,171.98

The court has given the Virginia & Alabama Coal Company a judgment for this sum against said Receivers, which is not excepted to (printed transcript, p. 357).

It appears from the record that there was a break in the price of coal after the contract of June 13, 1891, and that the price went down as low as 80 cents per ton at the mines (printed transcript, p. 313), and the court in fixing the compensation allowed intervenors, at the price named in that contract, for the coal delivered after March 4, 1892, favored the intervenors rather than the receivers.

(17.) Of the coal delivered by the Sloss Iron and Steel Company, subsequent to March 4, 1892, the time of the appoint-

ment of the Receivers of the Central Railroad and Banking Company, the following amounts were taken from the cars and used directly or indirectly by said Receivers:

816.85 tons at 95 cents..... \$775.00

The court has given the Sloss Iron and Steel Company a judgment for this sum against said Receivers, which is not excepted to (printed transcript, p. 358).

(18.) Between the date of the contract of July 13, 1891, and March 4, 1892, the date of the appointment of the Receivers of the Central Railroad and Banking Company, besides the large amount of coal furnished which was paid for by the Richmond & Danville Company, the Virginia & Alabama Coal Company and the Sloss Iron and Steel Company furnished to the Richmond & Danville Company a large quantity of coal which was distributed for use at points along the Central Railroad and leased lines as well as along the lines of other railroads operated by the Richmond & Danville Company (such as the Charlotte, Columbia & Augusta Railroad) which never had been in the Central's system. The amount of coal so shipped and the lines along which the same was unloaded, is shown for the Virginia & Alabama Coal Company, on the Printed Record at page 114, the aggregate being 22,654.80 tons, and for the Sloss Iron and Steel Company at page 296, the aggregate being 11,127.15 tons, making the total shipped during said period for both companies, 33,781.95 tons.

(19.) All the coal unloaded along the Central Railroad and leased lines during that period was not, however, used on those lines, but the locomotives on other lines operated by the Richmond & Danville Company were fed from the coal bins on the Central's lines. The amount of coal so used from the coal bin at Augusta, Georgia, is shown in the Printed Record at page 115, and amounted to 9,752 tons.

(20.) It is in proof that on March 4, 1892, at the time of the appointment of Receivers for the Central Railroad and Banking Company, the following amounts of coal were in the bins:

In bins on Central Railroad and leased lines..... 8,947 tons
In bins on Savannah & Western Railroad..... 4,925 tons

Total..... 13,872 tons
(Printed Record, pp. 118, 349, 243, 87).

It is contended by the intervenors that this coal represents in part the 33,781.95 tons of unpaid for coal delivered by them to the Richmond & Danville Company prior to March 4, 1892, and they contend that if they are not entitled to charge against the Central Railroad and Banking Company and its Receivers the whole of 33,781.95 tons of coal delivered prior to the receivership, yet that they had a special equity in the 13,872 tons of coal in the bins, and they have attempted to fix the amounts of the 13,872 tons which are properly to be apportioned to them respectively.

It is in proof that coal furnished by the intervenor was put in the bins during that period to the value of \$80,000, which was paid for (printed transcript, pp. 136, 54, 55); also that other coal companies had during the same period furnished coal which had been put in the bins, among which were the Corona Coal and Coke Company and the Little Warrior Coal Company. There is no proof in this case as to what part of the coal furnished by the two companies last mentioned was paid for, or whether anything is actually due them. The only proof submitted being the fact that the two companies had filed similar interventions to those filed by these intervenors, claiming certain balances due them for coal furnished during that period, and the amount of coal so furnished being in issue and still pending (Printed Record, p. 18). Nevertheless intervenors rely upon a contract (Printed Record, p. 228) entered into between said four coal companies *inter sese*, after suit brought, and to which contract the Central Company and its Receivers were not a party, and which was admitted in evidence over our objection (Printed Record, p. 154) as sufficient evidence to establish the claim of the four coal companies mentioned to the entire 13,872 tons of coal found in the bins on March 4, 1892, and to apportion the value of it among the four companies in accordance with apportionment agreed upon among themselves. They neither took into account the fact that the coal in the bins as a residuum of unused coal represented contributions not alone from unpaid for coal, but also from coal bought from all sources and paid for, and as well also the coal in the bins turned over by the Central Company to the Richmond & Danville Company on July 1, 1891, the railroad with all coal and other supplies having been turned over at that time as a "running road" (Printed Record, pp. 29, 37.

(21.) While the contract price of the coal at the mines was for the Virginia & Alabama Coal Company 90 cents per ton, and for the Sloss Iron and Steel Company 95 cents per ton, it was shown in evidence that the value of the coal at the several points of delivery varied from \$1.23 to \$3.38 per ton, but that the difference between the price of the coal at the mines and the coal at the bins is made up of freight charges for the haul of the coal over the Central's lines (Printed Record, pp. 309, 316).

(22.) The intervenors in their intervention taking advantage of the fact that the main cause was a litigation between the Central Railroad and Banking Company and Richmond & Danville Company, prayed a judgment against the last mentioned company as well as against the Central Railroad and Banking Company and its Receivers. The court below did not think that it had jurisdiction of the Richmond & Danville Company for the purpose of such a judgment, which was not germane to the objects of the original bill upon which the Richmond & Danville had been brought into court, and the prayer of such judgment was denied.

(23.) It is not true, as petitioners are advised, that it appears from the record that there was a diversion of the income from the earnings of the leased railroad to the payment of the interest on the bonds of the Central R. R. & B. Co. of Georgia in January, 1892, within the meaning of the rule in Fosdick's case. What the record discloses is that the lessee had transferred to it, under the lease, not only the road, but the income from several million dollars of stocks and bonds owned by the Central Company, which was more than sufficient to pay the interest on its mortgage debt (printed transcript, pp. 23, 29). And that the lessee agreed to pay, as part of the rental, the interest on the mortgage indebtedness of the Central Company (printed transcript, p. 34) and that the interest on the mortgage debt falling due in January, 1892, was paid. This is the full extent of the stipulation in the record on this point (printed transcript, p. 15, clause 14). The contention of the Central Company, as made by the record, is that the income of the railroad during that period was appropriated by the Danville Company and that issue is pending elsewhere (printed transcript, p. 10).

17. 848. 404 100. JAN 13 1896

JAMES H. MCKENNEY,
CLERK.

In the Supreme Court of the United States.
Brief of Erwin & Tompkins for
OCTOBER TERM, 1895.
No. 848 *Appellees - Petitioners*
Filed Jan. 13, 1896.

ROWENA M. CLARKE ET AL.,

vs.

THE CENTRAL R. R. AND BANKING
CO. OF GEORGIA ET AL.

THE CENTRAL R. R. AND BANKING
CO. OF GEORGIA

vs.

THE FARMERS LOAN AND TRUST
CO. OF NEW YORK ET AL.

THE FARMERS LOAN AND TRUST
CO. OF NEW YORK

vs.

THE CENTRAL R. R. AND BANKING
CO. OF GEORGIA ET AL.

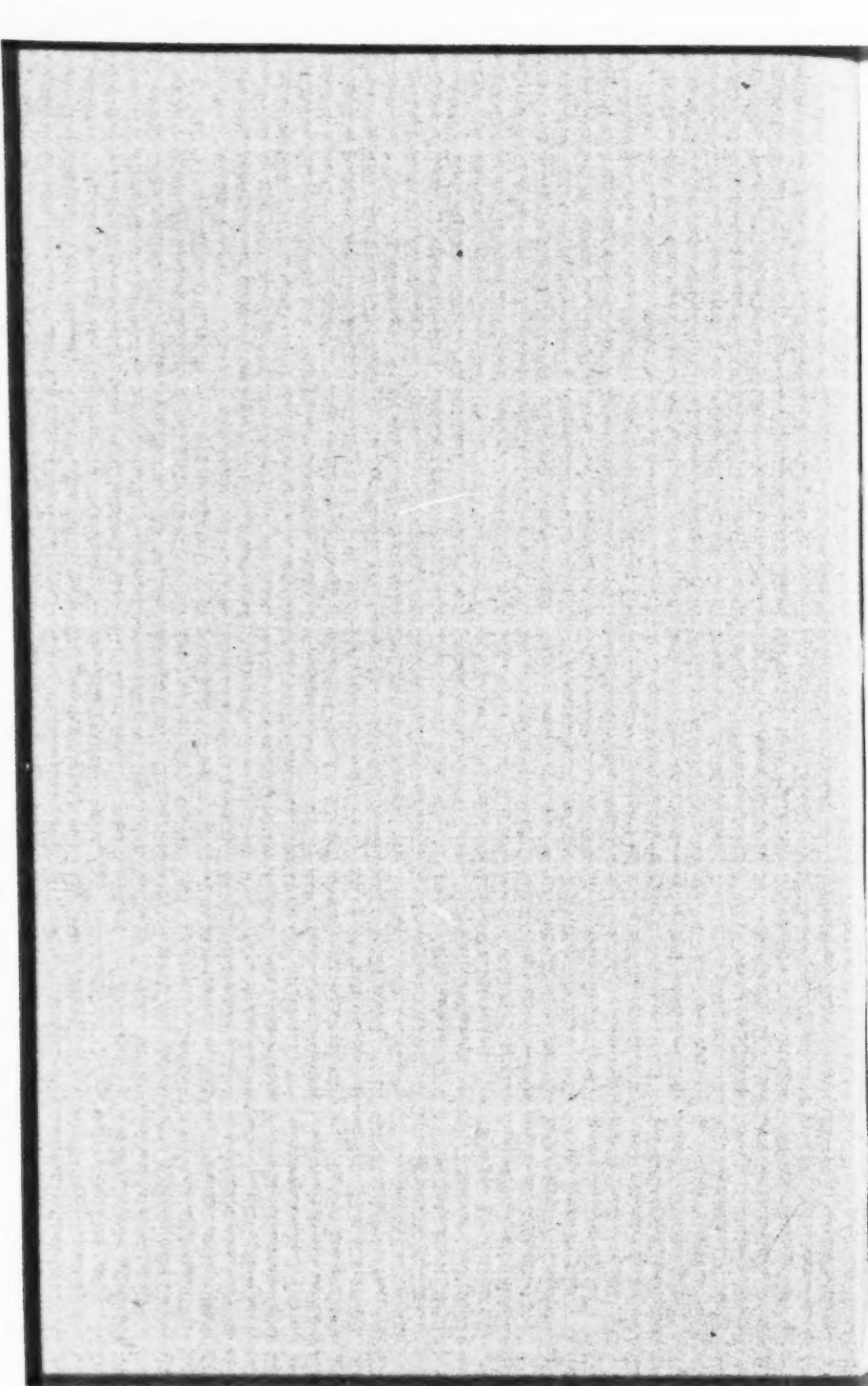
Bill, Dependent Bills, &c.

Intervention of the
Virginia & Alabama Coal
Co. and Sloss Iron and
Steel Company.

*Petition of Central Railroad & Banking Company of Georgia et al.
for Certiorari from Decree of Circuit Court of Appeals
for the Fifth Circuit.*

BRIEF OF

LAWTON & CUNNINGHAM, MARION ERWIN, TURNER, MCCLURE &
RALSTON, MERCER & MERCER, BUTLER, STILLMAN &
HUBBARD, H. B. TOMPKINS, Solicitors for Petitioners.



IN THE SUPREME COURT OF THE UNITED STATES.

ROWENA M. CLARKE ET AL.,

vs.

THE CENTRAL R. R. AND BANKING
CO. OF GEORGIA ET AL.

Bill, Dependent Bills, &c.

THE CENTRAL R. R. AND BANKING
CO. OF GEORGIA ET AL.

vs.

THE FARMERS LOAN AND TRUST
CO. OF NEW YORK ET AL.

Intervention of the
Virginia & Alabama Coal
Co. and Sloss Iron and
Steel Company.

THE FARMERS LOAN AND TRUST
CO. OF NEW YORK

vs.

THE CENTRAL R. R. AND BANKING
CO. OF GEORGIA ET AL.

Petition for *Certiorari*.

BRIEF OF SOLICITORS FOR PETITIONERS.

Statement of the Case.

(1.) On June 1, 1891, the Central Railroad and Banking Company of Georgia, (hereinafter designated as the Central Company, for brevity) a corporation under the laws of Georgia, owning and operating a line of railroad from Atlanta, Georgia, to Savannah, Georgia, executed a lease for ninety-nine years, of said railroad, to the Georgia Pacific Railway Company, a corporation organized under the laws of Georgia, and also of certain other lines

of railroad which had been leased by the Central Company, and also covenanted to give the Georgia Pacific Company the control of certain other lines of road which the Central Company controlled by stock ownership.

(2.) Previous to June 1, 1891, the Georgia Pacific Railroad Company had leased its own line of railroad extending from Atlanta, Georgia, to Birmingham, Alabama, to the Richmond & Danville Railroad Company, a corporation organized under the laws of Virginia, and which owned or controlled by leases a line of railroad from Atlanta to Washington, D. C.

(3.) On June 1, 1891, the Richmond & Danville Railroad Company (hereinafter designated as the Danville Company, for brevity) went into possession of the railroad lines of the system of the Central Railroad and Banking Company of Georgia, referred to in paragraph 1 and operated the same until March 4, 1892.

(4.) On March 4, 1892, Mrs. Rowena M. Clark, a citizen of the State of South Carolina, and a stockholder of the Central Railroad and Banking Company of Georgia, filed her bill on behalf of herself and other stockholders, in the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia, against the Central Railroad and Banking Company of Georgia, the Georgia Pacific Railroad Company, the Richmond & Danville Railroad Company, and other defendants, all citizens of States other than South Carolina. The bill charged among other things that the possession of the Central Company's lines by the Danville Company was without color of right that the lease to the Georgia Pacific Company was contrary to the laws of Georgia and *ultra vires* the Central Company's charter, and the then existing board of directors it was charged had been illegally elected, and had wrongfully abandoned said property to the Danville Company.

It sought a cancellation of the lease, the appointment of a Receiver to take possession of the railroad lines of the Central Company, which were charged to be in the unauthorized control and possession of the Danville Company, and to hold the same until a new board of directors could be elected, into whose hands it could be delivered.

(5.) On March 4, 1892, a temporary Receiver was appointed as prayed.

On the hearing, March 24, 1892, on the rule *nisi* for injunction and Receiver, on the above bill, the Danville Company disclaimed

all right to hold possession or operate the railroad lines of the Central Company, which lines it had been operating during the nine preceding months.

The Georgia Pacific also at said hearing disclaimed any right of possession under the lease, stating that the signing of said contract of lease by its officers was unauthorized.

The Central Railroad and Banking Company, at the hearing, filed an answer submitting to the jurisdiction of the Court and stating that it had, up to that time, continued in good faith to assert the legality and validity of said lease, but that in view of the disclaimers filed by said Companies, "the defendant submits to the jurisdiction of the Court as to the course it shall pursue in reference to the said contract of lease, and prays its direction and instruction in the premises."

(6.) At the hearing on rule *nisi*, the old directors of the Central Company were appointed by the Court Receivers of that Company, and provision was made for the calling of a new election of directors under the Company's charter. The Receivers took possession of the railroad as they found it, and among other things they took possession of whatever coal they found in the bins.

The Danville Company, however, took all freight earnings up to the receivership made by it, and settled its own traffic balances. The orders of the Court not authorizing the Receivers to take possession of any property or earnings of the Danville Company, nor anything more than the railroads and equipment of the Central system.

(7.) The new Directors of the Central Company were elected, but instead of applying to the Court for the properties, they, on July 4, 1892, caused the Central Company to file in the Court a dependent bill against the Farmers Loan and Trust Company of New York, trustee, and other creditors, in which it set up that, by reason of the fact that its revenues from June 1, 1891, to March 4, 1892, had been diverted and appropriated by the Danville Company, and other causes, it was unable to meet its maturing obligations, and had defaulted on July 1, 1892, on the semi-annual interest due on \$5,000,000 mortgage bonds, dated October 1, 1872, for which the Farmers Loan and Trust Company of New York was trustee, and that for these reasons the Directors were unable to assume the management of the property, and requesting the Court by proper process to call upon its creditors to come into Court, and that the

Court would administer the property for the benefit of all interested. On the rule *nisi* on this bill the Farmers Loan and Trust Company appeared and consented to a continuance of the receivership under it, as did likewise other parties who appeared.

(8.) The semi-annual interest due the Farmers Loan and Trust Company on mortgage of July 1, 1872, was duly paid in January, 1892, and default on the next semi-annual interest on said bonds was made July 1, 1892, which gave the Trustee the right to foreclose the mortgage six months thereafter.

(9.) On January 23, 1893, the Farmers Loan and Trust Company of New York, Trustee for bondholders, filed its dependent bill in said Court for the foreclosure of the five million dollar mortgage on the main stem of the Central Railroad, and to have a Receiver appointed to collect and apply to the said debt the income of the road which was likewise pledged in said mortgage. On January 23, 1893, the Court extended the receivership to that bill.

(10.) The Georgia Pacific and Richmond & Danville Company took under color of the lease, during the nine months of its operations, the income from several million dollars of stocks and bonds owned by the Central Company, which was more than sufficient to pay the interest on its mortgage debt (printed transcript, pp. 23 and 29). And the Lessee agreed to pay as part of the rental the interest on the mortgage indebtedness of the Central (printed transcript, p. 34).

But the record does not disclose whether the interest on the mortgage debt falling due January 1, 1892, was paid out of the income from stocks and bonds of the Central Company or out of the earnings made by the Danville while operating the Central lines. The contention of the Central Company as made by the record is that the income of the railroad during that period was appropriated by the Danville Company, and that issue is pending elsewhere (printed transcript, p. 10).

(11.) Afterward the Central Trust Company of New York, Trustee for second mortgage bondholders of the Central Company, filed their bill to foreclose a thirteen million dollar mortgage on the same property.

(12.) Since the receivership the Receivers of the Central Company have expended for betterments on its railroad lines, out of the earnings of the receivership, a sum much larger than the entire claim of the Intervenor.

(13.) The case at issue was made by the filing of Interventions in the main cause by the Virginia & Alabama Coal Company and Sloss Iron & Steel Company, afterward consolidated and conducted by the Virginia & Alabama Coal Company suing for itself and Steel Company. The suit is for the value of coal furnished by the Intervenor during the nine months operation by the Danville Company of the Central's lines.

(14.) The contract under which the coal was shipped by Intervenor was made between the coal companies on one side and Joseph P. Minetree on the other on July 13, 1892, something over a month after the Danville Company went into possession. The Circuit Court for the Southern District of Georgia found that Minetree was never the agent of the Central Company, but was at the time the agent of the Danville Company.

The Circuit Court of Appeals in its opinion make no finding on this point, but say it is immaterial whether the contract was made with the Central Company or Danville Company.

(15.) The Circuit Court of the Southern District of Georgia found that of the coal shipped by the Intervenor during the Danville Company's operation, (1) some of it arrived and was unloaded and used by the Receivers after their appointment, and for this the Receivers are liable to the Intervenor. (2) That some of it had been commingled with other coal in the bins, and that there was no sufficient evidence showing what part, if any, of the coal in the bins, was that furnished by the Intervenor, and for that reason refused to give intervenors a judgment for the amount claimed as their coal in the bins. (3) That as to the coal furnished to the Danville Company and consumed by it during its operation of the Central's lines, that this constituted a debt of the Danville Company, and the claim against it for keeping its system a going concern, and was not a debt of the lessor company, nor did it constitute a preferential claim against the Receivers of the lessor company.

(16.) The Circuit Court of Appeals reversed the decree of the Circuit Court on the last two propositions. Stating in its opinion that it was immaterial whether the lease be valid or invalid or whether the contract for purchasing the coal was made by the Central Company or by the Danville Company, and put its opinion wholly upon the principle enunciated that when one railroad company operates the lines of another railroad company by lease, valid

or invalid, creating debts for operating expenses and pays rental to the lessor company, which is applied to the interest on the bonded debt of the lessor company, that upon a dissolution and surrender of the lease that the supplies furnished to the lessee constitute a charge upon the railroad of the lessor preferential to the lien of the mortgage on the lessors' road.

(17.) This petition for *certiorari* to review the judgment of the Circuit Court of Appeals is brought by the representatives of the bondholders of the Central Company and by the Central Company and its Receivers, representing its stockholders and all classes of its creditors interested against the diversion of its assets to the payment of the indebtedness created by the Danville Company.

LAW OF THE CASE.

QUESTION AT ISSUE ON PETITION FOR CERTIORARI.

(1.) Since the Circuit Court of appeals placed its decision wholly upon the ground that supplies furnished to a lessee company, operating a leased railroad constituted a preferential claim against the lessor company's railroad, when the rental paid is applied to interest on the bonded debt of the lessor company, the allowance of the petition for *certiorari* to review the decree of the Circuit Court of Appeals, ought to depend solely upon the question as to whether the rule there enunciated is the law, and if not the law, whether the petition raises a question of sufficient general importance to call for its correction.

It is true there were other questions in the case, such as whether the Intervenor had sufficiently identified any part of the coal found in the bins at the time of the appointment of Receivers of the Central Company, and the want of power in Joseph P. Minetree, the purchasing agent of the Danville Company, to make a contract binding on the Central Company, and the question as to whether there be any statutory lien in favor of Intervenor, on all of which points the finding of the Circuit Court had been in favor of these petitioners; but the necessity of determining them in the Circuit Court of Appeals was cut off by the view taken by that Court as to the application of the rule in *Fosdick v. Schall* to this case, and therefore that is the sole question on the merits which it is necessary to consider on this petition.

THE RULE IN FOSDICK'S CASE NOT APPLICABLE.

(2.) An analysis of the case of *Fosdick v. Schall*, 99 U. S., 235, and the subsequent application in similar cases of the principles involved, shows that the rule announced in that case is not a rule whereby a furnisher of supplies is given any right in the railroad operated, or lien on the same; but the rule grows out of the fact that the earnings of a railroad company made from the consumption of supplies furnished are impressed with a trust in the hands

of the officers of the *company receiving the earnings* in favor of the furnisher of supplies and certain special classes of creditors, for their payment first and before the payment of the interest on the bonded debt *of the railroad company operating the road*. And where there has been a diversion of the fund in favor of such bondholders, and there is a contest between them and such special creditors over the assets of such operating company, equity compensates such special creditors for such diversion. But where the railroad system of the operating company includes leased lines, in no case has the Supreme Court of the United States yet held that the preferential equity should be extended beyond the leasehold interest of the operating company in the leased line.

Instead of making supplies and the operating expenses a charge upon the lessor and *corpus* of the leased property, it has been the invariable rule, where a railroad system has been placed in the hands of a Receiver, and the Receiver elects to discontinue the payment *of rent*, to allow the lessor to withdraw its road from the receivership. This was the rule announced by the Court in the Wabash case, although there was some four million dollars of such preferential claims outstanding, and created by the operation of the system of the lessee company.

Quincy, etc. Company vs. Humphries, 145 U. S., 82.
U. S. Trust Co. vs. Wabash Ry., 150 U. S., 287.

Instead of saddling the debts of the lessee company for keeping its system a going concern, the rule is that if a Receiver elects to retain possession of the leased road he must adopt the lease and pay the rental.

Idem.

The Circuit Court of Appeals appears to have overlooked the fact that Intervenor's claim is a debt of the Danville Company, and

if that company be solvent is collectable from it; if that company be insolvent, it becomes a preferential claim against that company, being for supplies for keeping the Danville system a going concern.

Clyde vs. Richmond & Danville Co., 56 F. R., 539.

(This case is cited only to the point that such supplies are to be considered as furnished to keep the whole system of the operating company a "going concern.")

NO DIVERSION.

(3). There has been no diversion of the earnings in the case at bar within the meaning of the rule in *Fosdick vs. Schall*. That rule was never intended to militate against the principle that the vigilant creditor is entitled to the fruits of his diligence. And where payment has been made to one of several creditors, standing on the same footing, it does not undertake to undo such act of the parties. The lien for rental is one of high statutory dignity in Georgia, (Code, Sec. 1977), and the claim of lessors for accrued rentals has heretofore been recognized by the courts as belonging in the class of preferential claims.

Quincy, etc. Company vs. Humphries, 145 U. S., 82.

Whether the lessee company under the terms of the lease applied the income from the stocks and bonds in other companies turned over under the lease to pay the interest on the mortgage debt, (which was amply sufficient for that purpose), or whether it took a part of the earnings made by it on the Central lines, makes no material difference; in either case, in fact, and by the terms of the lease, it was but a payment of agreed rental. There was no privity between the mortgage bondholders of the Central Company

and the Danville Company and its supply creditors. It was not as was the case of *Fosdick vs. Schall*, a case where the Central Company's mortgage bondholders and other creditors stood silently by and allowed *their debtor* to accumulate large indebtedness for operating expenses. They did not have the right to interfere in the affairs of the lessee company so long as the rental was paid. The case is therefore not within the reason of the rule in *Fosdick's* case.

Neither was there any diversion of earnings during the Danville Company's operation, to betterments. The record shows only the application of income earned by the Central Company's receivers to betterments. Supply creditors, whose supplies were consumed by the Danville Company, can have no equity in the earnings of the Central made by the receivers with other supplies.

PAYMENT FOR SUPPLIES NOT A PUBLIC DUTY.

(4). It was urged in the Court below that because the Courts have uniformly held that a railroad company which has leased out its railroad is still liable for *torts* committed by the lessee in the operation of the road, on the ground that the safe operation of the road was a public duty imposed by its charter, that therefore payment of necessary supplies for operation of a road must be also a public duty.

To this we reply: Every corporation, like every natural person, ought to pay its debts; but this is a private duty for a breach of which the public or a member of it has no cause of action. The distinction between the duties to the public and the private contract duties of a railroad company is clearly indicated in the following extract from *Redfield Law of Railway*, 616, quoted with approval by the Supreme Court of Georgia :

" But even where such contracts (railroad leases), have been made by permission of the Legislature, it has been held in this country that the company leasing itself does not thereby escape all responsibility to the public. But that the public generally may still look to the original company as to all its obligations and duties *which grow out of its relations to the public and are created by the charter* and the general laws of the State, and are independent of contract or privity between the party injured and the railway."

Singleton vs. Southwestern R. R., 70 Ga., 470.

LESSEE NOT AN AGENT OF THE LESSOR.

(5). While under a lease, whether valid or invalid, the lessee is the agency through which the lessor performs its charter obligations to the public, yet this by no means creates the lessee the agent of the lessor to make contracts with private individuals for supplies used by the lessee in the operation of a railroad. If the lease be lawful the lessee contracts on its own account. If the lease be *ultra vires*, then it is wholly void, and cannot confer upon the lessee the character of an agent for the lessor capable of binding it by contract.

Transportation Co. vs. Pullman Co., 139 U. S., 24.

GENERAL IMPORTANCE OF THE QUESTION.

(6). The question disposed of by the Circuit Court of Appeals in this case, not only carries with it the forty thousand dollars involved in these interventions, but also several hundred thousand dollars on similar interventions filed in the main cause, and therefore from a pecuniary standpoint is of great importance to the parties to the present suit. But the importance of the question transcends even the interests of the parties to the present litigation.

The question which makes the distinguishing feature of this case has not been directly passed upon yet by any other of the United States Courts save the Circuit Court and Circuit Court of Appeals through which this cause has passed, and they both have reached different conclusions.

The fact, however, that the Circuit Court of Appeals for the Fifth Circuit has made so extensive an enlargement of the application of the rule in *Fosdick vs. Schall*, as that it charges a lessor company with all the operating expenses of a leased road which by accident or design the lessee company may leave unpaid, will if that extension of the rule be fallacious, give rise to an untold amount of litigation in the various subordinate Courts, and by reason of the vast amount of railroad property now being administered in the Courts, the weight of such erroneous decision in the forced reorganization of such systems now going on is destructive of the rights of all lessors.

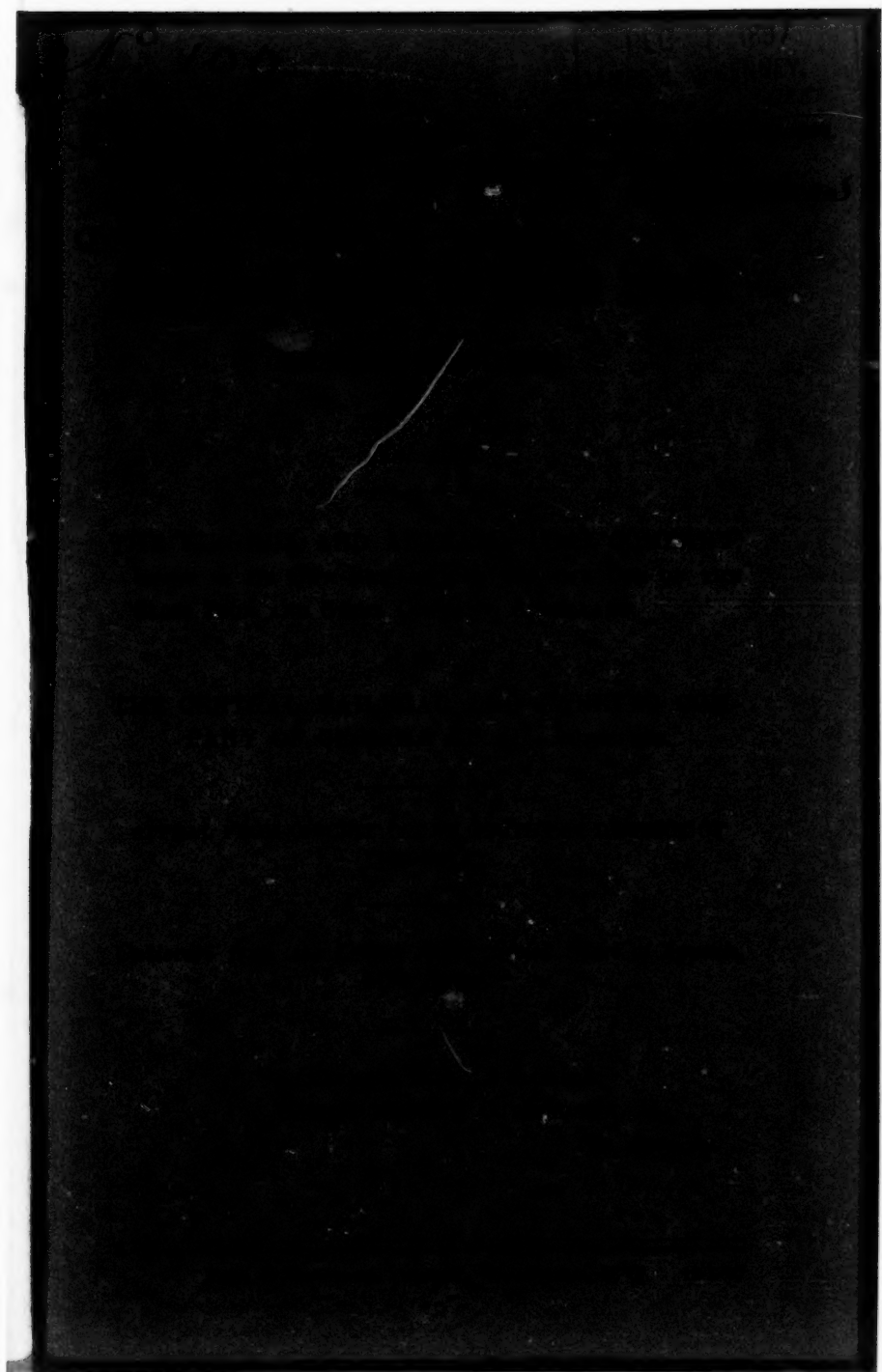
Besides the doctrine announced by making the lessor companies in effect the insurers of the solvency of the lessee companies, practically raises an obstruction in the way of the formation through the lease system of the great trunk lines, the necessity for which has been demonstrated in the rapid expansion of our interstate commerce.

All these considerations raise the question to such a degree of general importance as demands a speedy settlement by the Court of last resort.

OTHER POINTS.

(7). It is not deemed necessary to cover in this brief other points of law than those upon which the Circuit Court of Appeals rested its decision, because if those be erroneous the writ ought to issue that the case may be reviewed, but we have filed with the record from the Circuit Court of Appeals the briefs of solicitors on both sides used in that Court.

LAWTON & CUNNINGHAM,	MARION ERWIN,
TURNER, MCCLURE & RALSTON,	MERCER & MERCER,
BUTLER, STILLMAN & HUBBARD,	H. B. TOMPKINS,
	<i>Solicitors for Petitioners.</i>



IN THE
Supreme Court of the United States.

OCTOBER TERM, 1897.

No. 100.

THE VIRGINIA AND ALABAMA COAL COMPANY,
Suing in its Own Behalf and for the Use of the
Sloss Iron and Steel Company, Appellant,

vs.

THE CENTRAL RAILROAD AND BANKING COM-
PANY OF GEORGIA ET AL., Appellees.

APPEAL FROM CIRCUIT COURT, SOUTHERN DISTRICT OF
GEORGIA.

*Certiorari from the United States Circuit Court of Appeals,
Fifth Circuit.*

STATEMENT OF THE CASE.

On June 1, 1891, the Central Railroad and Banking Com-
pany of Georgia leased to the Georgia Pacific Railway Com-
pany for a term of ninety-nine years all of its railroad lines
and their appurtenances, reserving unto itself only its bank-

ing-house in the city of Savannah and its banking assets. All the revenues arising from the lines of the Central Company and all the income and profits arising from stocks and bonds belonging to the Central Company were assigned and set over to the lessee, the lessee agreeing for its part, among other things, to pay the interest on all bonded and other indebtedness of the lessor and to pay as rental an amount equivalent to 7 per centum per annum upon the capital stock of the lessor. The lease demised (Record, p. 22) "all * * * fuel, material, and supplies" then possessed by the Central, and the twenty-first article (p. 30) provided that at its termination for any cause the Danville Company would return to the Central Company the "property hereby demised," except such as should be disposed of, in as good condition as when received, without allowance for betterments. While it was provided in the sixteenth article (p. 28) that the Danville Company took it as a running road and agreed to pay current expenses, receiving current earnings, there was no similar provision with reference to their surrender of possession. On the contrary, article 21 shows a contrary intention. The lease also provided that a certain sum should be paid to the Central Company annually for the independent maintenance of its corporate organization.

The Georgia Pacific Railway Company had previously leased its railroad to the Richmond and Danville Railroad Company, which operated a railroad between Atlanta, Ga., and Washington, D. C., and many other points. The Danville Company, by virtue of its control over the Georgia Pacific Company and at the request of that company (Record, p. 4), went into possession of the railroads of the Central Company, appointed its own officers, and assumed their operation; so that the Danville Company was in substance the lessee of the railroads of the Central Company and will be hereinafter referred to as such.

The Danville Company continued to operate the lines of the Central Company under said lease until the fourth day

of March, 1892, when Mrs. Rowena M. Clarke, a stockholder of the Central Railroad and Banking Company of Georgia, filed in the court below her bill, on behalf of herself and all other stockholders of the Central Company, against The Central Company, The Danville Company, The Georgia Pacific Company, and other defendants.

This bill was brought for the purpose of canceling the lease of the Central Railroad lines to the Georgia Pacific Company and to restrain the West Point Terminal Company from voting the majority stock of the Central Company, then owned by it. The bill prayed for injunction and receiver. Upon the day it was filed a temporary receiver was appointed under it for the Central Railroad and Banking Company of Georgia. This bill contained no suggestion or allegation that the Central Company was insolvent.

On the hearing of the rule *nisi* for injunction and receiver both the Danville Company and the Georgia Pacific Railway Company entered a formal disclaimer as to their right to hold possession of and operate the Central railroad under said lease, whereupon the Central Company filed its answer, in which it stated that it had in good faith asserted the validity and legality of the lease, but that in view of the disclaimers filed by the other parties to the lease it submitted itself to the jurisdiction of the court, and prayed the direction of the court as to what course it should pursue. Upon the hearing of this rule, on March 28, 1892, the court passed an order appointing the directors of the Central Company receivers of all its property and assets, to take charge of the same, and to operate the railroad until there could be a reorganization of its board of directors under and in pursuance of the provisions of the charter of the Central Company and of the order of the court, and to turn over said railroad and said property and assets to the newly elected board of directors when reorganized. The validity of the lease was not touched or passed upon by the court.

The new board of directors of the Central Company was duly elected, but instead of applying to the court for the properties they, on July 4, 1892, caused the Central Company to file a dependent bill against the Farmers' Loan and Trust Company of New York, trustee, and other creditors, under which it set up that on account of the appropriation by the Danville Company of its revenues, and from other causes, it was unable to meet its maturing obligations, and had defaulted on July 1, 1892, on the semi-annual interest due on \$5,000,000 of the mortgage bonds, dated October 1, 1872, for which the Farmers' Loan and Trust Company was trustee, and for these reasons the company requested the appointment of a receiver, that its affairs might be administered for the benefit of all interested.

Under this dependent bill all the receivers, with the exception of H. M. Comer, were discharged, and he was, on July 15, 1892, appointed and continued as sole receiver.

On January 23, 1893, the Farmers' Loan and Trust Company of New York, trustee of the \$5,000,000 mortgage heretofore referred to, filed its dependent bill for the foreclosure of said mortgage, and to collect and apply to said debt the income of the road, which was pledged under said mortgage; and on said day the court extended the receivership to that bill, appointing H. M. Comer receiver under it, and in connection with his former appointments. The semi-annual interest due the trustee under this mortgage was duly paid in January, 1892, and default on the next semi-annual interest on said bonds was made July 1, 1892. The mortgage provided that the trustee had the right to foreclose six months thereafter. (Record, p. 13, top.)

On June 30, 1893, the bill of Mrs. Rowena M. Clarke against the Central Railroad and Banking Company of Georgia, having come on for a final hearing, was, after argument, dismissed for want of equity, and the injunction granted on March 28, 1892, restraining and prohibiting the West Point Terminal Company from voting the majority stock of the

Central Company was rescinded and vacated. It was expressly provided in this final decree that the question of the validity of the lease by the Central Company to the Georgia Pacific Company was not passed upon in the decree, nor has it ever been passed upon.

The record contains the following stipulation made after the case was appealed: "It is a fact that since the receivership the receivers of the Central Railroad & Banking Company of Georgia have expended [for] betterments in its railroad lines from the income of the road during the receivership a sum much larger than the entire claim of the intervenors." There is nothing else in the record to show any expenditures. It does not appear when they were made nor what was their nature, nor does the record disclose the nature or amount of debts sought to be enforced and on which preferences are claimed.

Into this litigation comes, by intervention, the Virginia and Alabama Coal Company, in its own behalf, and for the use of the Sloss Iron and Steel Company, and asks judgment against the Danville Company and the Central Company for coal furnished under a contract dated July 13, 1891, set out in the record (p. 36), which coal was used in the operation of the railroad of the Central Company. Whether the contract was made with the Danville or with the Central Company is a disputed fact. The claim of the Virginia Company is for \$26,607.44, and of the Sloss Company \$14,359.38.

The original intervention of the Virginia Company simply asked for a decree against the defendants The Central Company and the Danville Company, jointly and severally; it did not ask that the debt be paid out of the income of the receivership, or that it be given a preference over all other creditors. The receivers were made parties, but no relief against them was asked. Subsequently it amended its intervention and alleged that at the time of the appointment of the receiver of the Central there was a considerable portion of the said coal still in the bins of the Central, and that

for this coal it should have a decree charging the value of this coal upon the income of the receivership as a part of the receivership operating expenses and constituting it a preferential debt over that of all other creditors of the Central Company, and that the value of this coal should be determined, not by the contract price, but by its market value, which was considerably in excess of the contract price. The same is true of the intervention of the Sloss Company. It asks a joint and several judgment against the Central Company and the Danville Company for its whole claim, but asks a preference over all other creditors of the Central Company only as to the value of the coal which went into the possession of the receiver of the Central Company, the value being determined by the market value and not the contract price.

The defendants, The Central Company and its receivers, demurred to both interventions—first, on the ground that the interventions did not set forth any cause of action against them; and, second, that from the averments of the interventions it appeared that the contract set up therein was made with the Danville Company alone, and that if there was any indebtedness thereunder it was the indebtedness of that company and not of the Central Company or of its receivers.

The master found the Danville Company and the Central Company and the receivers of the Central, jointly and severally, liable to the Virginia Company for \$26,607.44 and to the Sloss Company for \$14,339.38, finding the value of the coal in the bins at the time of the appointment of the receiver at the contract price and not at the market value, as contended for in the interventions; and, further, that upon the payment of these amounts by the Central Company or its receivers that a judgment should be entered in its favor against the Danville Company for whatever sum might be paid for coal delivered prior to March 4, 1892, and coal used before the appointment of a receiver. The master found in supplemental reports that \$5,543.10 of the Virginia Com-

pany's coal and \$2,682.80 of the Sloss Company's coal was delivered to and consumed by other railroad companies not connected in any manner with the Central Company, and therefore deducted these two amounts from the respective claims of the Virginia Company and the Sloss Company.

The master in his finding upon the facts found separately the amount of coal delivered and consumed before March 4, 1892, the date of the receivership, the amount in the bins at the appointment of the receiver, and the amount delivered to the receivers subsequent to March 4, 1892, as follows:

VIRGINIA AND ALABAMA COAL COMPANY.

Delivered and consumed before March 4, 1892..	\$13,735 80
In bins at appointment of receiver, March 4, 1892..	6,700 50
Delivered subsequent to March 4, 1892.....	6,171 30
	<hr/>
	\$26,607 60
Deduct coal delivered and consumed by other companies not connected with the Central, as found by supplemental report of master.....	5,543 10
	<hr/>
	\$21,064 50

SLOSS IRON AND STEEL COMPANY.

Delivered and consumed before March 4, 1892..	\$9,766 28
In bins at appointment of receiver, March 4, 1892.....	3,817 10
Delivered subsequent to March 4, 1892.....	776 00
	<hr/>
	\$14,359 38
Deduct amount delivered to and consumed by other companies not connected with the Cen- tral, as per master's supplemental report.....	2,682 80
	<hr/>
	\$11,676 58

Upon exceptions to the master's report, the circuit court held that, the contract having been made with the Danville Company, that company alone was liable to the intervenor for all coal delivered and consumed prior to the receivership of the Central railroad, and likewise for all coal in the bins of the Central railroad at the time of the appointment of the receiver, and that the Central Company was not liable for such coal, but that the receivers of the Central Company should pay from the current earnings of the railroad at contract price, without interest, for all coal received by them from the intervenors after the 4th of March, 1892, the date of the first receivership, and that the value of the coal so received was, in the case of the Virginia Company, \$6,171.97, and in the case of the Sloss Company \$735.16. These amounts are not in dispute and have been paid.

The difference in the values of the Sloss Company's coal delivered after the receivership as found by the master and by the court is accounted for by the fact that the master computed it at 95 cents a ton and the court at 90 cents a ton.

The intervenors appealed from the decree of the circuit court to the circuit court of appeals for the fifth circuit, and the circuit court of appeals reversed the decree of the circuit court, and found that the receivers of the Central Company were liable at the contract price, not only for the coal which they received after their appointment, but also for the coal which was in the bins at the date of their appointment and for coal delivered to and used in the operation of the railroad lines of the Central Company prior to their appointment and which was then unpaid for, but that they were not liable for the coal which the master had found was delivered under the contract to other railroad companies not connected in any manner with the Central and which he had disallowed in his supplemental report. The court of appeals found that, irrespective of the question whether the contract was made by and with the Danville Company or the Central

Company, the coal having been used in the operation of the railroads of the latter company, it was a debt of the latter company of such a character as should be given a preference over all other creditors and to be paid out of the receivership income, and, if that was not sufficient, out of the corpus of the property.

To review this decree the writ of certiorari of this Court was issued.

STATEMENTS IN APPELLANTS' BRIEF DIS- PUTED.

1. Stipulation of counsel as to delivery of coal is invariably shown in appellants' brief to cover delivery "to the (railroad lines of the) Central Railroad and Banking Company of Georgia." The parenthesis is misleading and is not in the stipulation. The language was carefully selected and was meant to carefully exclude the idea of delivery to the Central corporation.

2. Appellants' Brief says (p. 21) that when the receiver was applied for the lawfulness of the lease was not even asserted. There is no justification for this statement. The Danville Company took no position on the point; the Pacific Company attacked it solely on the ground that its stockholders had not acted, while the Central Company (Record, top of p. 5) "continued in good faith to assert the legality and validity of said lease," and has never abandoned this position, unless submission to the jurisdiction of the court be so construed; and yet counsel goes so far as to assert on page 23 that neither lessee nor lessor asserted its validity. The statement is misleading.

3. On page 24 of Appellants' Brief it is said that the Pacific Company, "without a syllable of writing," turned the

Central property over to the Danville Company. The record will be vainly searched for "a syllable of writing" to justify this statement.

4. It is taken from an unpublished opinion of Judge Speer (quoted on p. 28, Appellants' Brief) in Macon Foundry and Machine Works case, which seems to be relied upon by counsel as controlling this one. Not only does the decision of the district judge not bind the Supreme Court, but statements of fact in his opinion cannot be interpolated into this record, particularly when they are shown by the record to be incorrect.

The case was a small one, and the details of its facts peculiar to itself. For these reasons it was not appealed; but the conclusions reached in that opinion have been strenuously and continuously disputed by these appellees, and are thoroughly unsound. It may be significant that the opinion has never been permitted to appear in the reports.

BRIEF OF THE ARGUMENT.**I.**

Appellants, by their pleadings, do not claim any preference for coal delivered and consumed before the receivership, and that question is not properly before this Court.

It will be observed that in the original intervention of the Virginia Company (Record, p. 34) the prayer was solely for a judgment against the Central Railroad and Banking Company of Georgia and its receivers and the Richmond and Danville Railroad Company, and that the only amendment which has ever been filed to this intervention (Record, p. 51) makes no change in the prayer except to the effect that "so much of said sum of \$26,607.44 as is for coal taken possession of and used by said receivers in the operation of the railroad and other property in their hands may be decreed to be paid by the receiver of this court as part of the expenses of operating said business," although it is alleged in the body of the amendment (p. 52) that "the same is a charge upon the income of the property of the said Central Railroad & Banking Company of Georgia that should be paid ahead of all debts, liens, and priorities existing against said company."

The intervention of the Sloss Iron and Steel Company (p. 153) was drawn by the same hand, and prayed solely for a judgment against the Richmond and Danville Railroad Company and the Central Railroad and Banking Company of Georgia for the entire \$14,359.38, and against H. M. Comer, as receiver for the value of the coal taken possession of by the receivers. The Sloss intervention was not filed until December 3, 1892, more than two months after the inter-

vention of the Virginia Company had been perfected by amendment. No amendment was therefore filed to the Sloss intervention, except the one appearing on page 172, inserting the name of the Virginia Company as usee.

No amendments to these interventions have been filed other than those herein cited, and it will appear from these that the only prayers of these intervenors and appellants other than for ordinary judgments are (1) that so much of the Virginia Company's claim as is for coal taken possession of by the receivers may be paid by the receivers as operating expenses, nothing being said as to the preferential character of the claim, and (2), in the Sloss Company's intervention, that they may have a judgment against Comer, receiver, for the value of the coal which went into the possession of the receivers, although there is an allegation, on page 154, that the claim is for operating expenses, and is a first lien upon the property of the Central Company.

The coal which was received by the receivers after March 4, 1892, has been paid for, and it will therefore appear that the only issue before this Court is whether the Central Company is liable for the coal which was delivered and consumed during the possession of the Danville Company prior to the receivership, and, if it be so liable, whether it is a preferential debt. As the briefs of appellants' counsel, however, discuss the case on the theory that this Court has before it for decision the question as to coal delivered and consumed prior to the receivership, it is necessary for us to do the same. But we make this discussion under protest, asseverating that **the question is not before the Court, and that there are no pleadings** under which the Court could give any preference to the claim of the appellants for coal delivered and consumed prior to the receivership. As to this coal the only question before the Court is whether the Central Railroad and Banking Company of Georgia is liable for it as a simple contract creditor and without reference to preference.

II.

The contract was made with the Danville Company and not with the Central Company.

Before discussing the legal questions in the case it is proper to determine this fundamental fact, which the intervenor disputes in the face of its own pleading and the overwhelming evidence of the record. The contract under which both coal companies sold the coal is as follows (Record, p. 36):

"RICHMOND & DANVILLE RAILROAD COMPANY.

"OFFICE GENERAL PURCHASING AGENT, ATLANTA, GA.

"JOSEPH P. MINETREE, GENERAL PURCHASING AGENT.

"THE VIRGINIA & ALABAMA COAL CO., MR. J. R. RYAN,
V. P. & G. M., *Birmingham, Ala. :*

"DEAR SIR: We beg to accept your verbal offer of today to furnish the C. R. R. & B. Co. of Ga. with, say, 275,000 tons of best quality engine steam coal for the next twelve months, commencing July 1, 1891, and ending July 1, 1892, at 90 cents per ton of 2,000 lbs., to be delivered on cars at mines, and to be shipped at times and in quantities to suit. Settlements for the coal delivered in any one month to be made on or about the first of the second succeeding month; and the C. R. R. & B. Co. of Ga. reserves the right to increase or decrease the monthly deliveries upon reasonable notice at any time. The division superintendents of the divisions for which the coal will be required will communicate with you as to the monthly deliveries, and all bills for coal furnished under this contract to be sent direct to the division superintendents. Kindly confirm this at once and oblige,

"Yours truly,

"(Signed)

JOSEPH P. MINETREE,

General Purchasing Agent.

"JULY 13, 1891."

The master found as a fact that the Danville railroad was operating the lines of the Central Company and conducting all the business of the said corporation, save and except the banking business, from the 1st of June, 1891, to the 4th of March, 1892; that the intervenors had no notice of the contract of lease save and except what came to them from public notoriety and the press comment; that the negotiations which ended in the contract were begun with W. H. Green, general manager of the Danville Company; that the intervenors did not understand at the time of the contract that they were selling to the Danville Company, but were assured by Minetree that he had the right to purchase for both the Danville and the Central Company, and Ryan, the general manager of the Virginia Company, understood at the time of entering into the contract that he was selling direct to the Central Company.

Upon these findings of fact the master concluded that the contract was made with the Central Railroad and Banking Company of Georgia.

It appears from the evidence of Ryan, the general manager of the Virginia Coal Company (Record, pp. 93, 94), and of Seddon, the president of the Sloss Company (Record, pp. 203, 204), that the several coal companies operating in the southern territory had entered into an agreement to "squeeze" the railroads (Record, p. 93), wherein it was agreed that certain coal companies should sell only to certain railroads, the object of the combination being to stop competition and to force up the price of coal, and that under this arrangement the Virginia Company was prohibited from selling coal to the Danville Company, and that this was the only reason that the name of the Central Company was used in the contract.

The circuit court, upon review of the finding of this fact by the master, held that the contract was made with the Danville Company and not with the Central Company, using the following language:

"The evidence discloses the fact that the agents of the intervenor companies hesitated and, indeed, refused for a time to supply the coal desired by the purchasing agent of the Richmond and Danville; but, by a process of casuistry noteworthy, at least, for its elasticity, an arrangement was made to furnish the coal nominally for the Central, but really for the Richmond & Danville. This is perfectly clear from the evidence of Mr. Ryan, the vice-president and general manager of the Virginia & Alabama Coal Company. No officer of the Central had any knowledge of the contract."

The circuit court of appeals held that it made no difference whether the contract for the purchase of coal was made by the Central Company or the Danville Company. In either event its conclusion was the same: that the Central Railroad and Banking Company of Georgia was liable.

The following extracts from the record demonstrate that the contract was made with the Danville Company, and that the intervenors knew that they were making a contract with the Danville Company and not with the Central Company.

The intervention of the Virginia Company alleged as follows (Record, p. 34):

"And thereupon intervenor shows to the court that the said Richmond & Danville Railroad Company, while operating the said Central Railroad & Banking Company of Georgia, purchased from intervenor for the use and benefit of the said Central Railroad & Banking Company, in the several divisions, coal; which **purchase was made in pursuance of the contract of said Richmond & Danville Railroad Company, dated July 13th, 1891.**"

The intervention of the Sloss Company alleged as follows (Record, p. 153):

"During the period in which the said Richmond & Danville Railroad Company operated said Central Railroad & Banking Company as aforesaid, **petitioner sold to the said Richmond & Danville railroad,** to be used and consumed in operating the said Central Railroad & Banking Company of Georgia, coal and coke," etc.

The following agreed statement of fact is found in the Record, p. 2:

"On June 1st the Richmond and Danville Railroad Company, **through its officers**, went into possession of the railroads of the Central Railroad & Banking Company of Georgia, and operated the same until March 4th, 1892."

The testimony of E. P. Alexander, who was president of the Central Company, states (Record, p. 149) "that the Central Company had no employes whatever engaged in railroad operation, and that the only employes which it had were its president and board of directors and the employes engaged in its banking business." And again, in explaining why it was not deemed necessary to specifically notify people with whom the Central had had dealings of the lease, he said (Record, p. 152): "The matter was already as notorious and as much talked of as a war would have been."

It does not appear that the Central Company had ever had any dealings with either of the coal companies before the lease, so, of course, there was no obligation to specifically inform them of the change. Upon this point the general manager of the Virginia Coal Company testified as follows (Record, p. 97):

"Q. Had your company supplied the Central Railroad & Banking Company of Georgia with coal previous to the lease in June, 1891, to the Richmond & Danville Railroad Company? A. I do not know, sir; I do not think we had. I do not remember. Q. Had you supplied the Richmond & Danville previous to that time? A. Yes, sir."

He further testified (Record, p. 94):

"Q. Do you know, or not know, that during the period of these shipments the Richmond & Danville had leased the Central railroad? A. I know what I heard about them. Q. Well, heard from whom; from the Central officials and the Richmond & Danville—both or either? A. Well, I heard from both."

Seddon, president of the Sloss Company, testified on direct examination (Record, p. 197):

"Q. Under what contract was the coal shipped which is represented by this account? A. Under a contract made between Mr. Minetree, purchasing agent, and the Virginia & Alabama Coal Company, and the subsequent modification of that contract by Capt. Green. Q. You refer to the contract between the Virginia & Alabama Coal Company and Mr. Minetree. Do you mean the Ryan contract, which is attached as an exhibit to the intervention of the Virginia & Alabama Coal Company? A. Yes, sir; that is the conclusion of the various agreements between us—between Ryan and the authorities of the Richmond & Danville."

That the lease was a matter of public notoriety and that Minetree was purchasing agent of the Danville Company appears from Seddon's testimony (Record, pp. 199, 200). But if the lease had been unknown to intervenors, why should they suppose that a Danville Company's officer could contract for the Central Company? Before the Central Company can be bound by Minetree's acts it must be affirmatively shown that he was either an officer or an authorized agent of the Central Company. The evidence is conclusive that he was not authorized.

III.

The Central Company (the lessor) is not liable upon the contract of the Danville Company (the lessee).

The Central Company was neither a party nor a privy to the contract between the appellants and the Danville Company, and therefore it would seem plain that the Central Company could not be held liable upon the contract.

The theory of the appellants is that a railroad company, being a quasi-public corporation, is under certain public obligations, and that one of these obligations is the duty to

operate its railroad, which it cannot escape by a mere lease of its railroad to another; that it is absolutely necessary that coal should be used in the operation of the railroad, and therefore the lessor is liable for all coal used in the operation of the railroad, notwithstanding the fact that the coal was sold to the lessee.

The fallacy in this argument is patent. The appellants confuse the public obligation to operate the railroad with the private obligation to pay a debt incurred by some one else in the operation of the railroad. It is not a matter of public concern whether the appellants' debt is paid by the Danville Company or by the Central Company, or indeed whether it is paid at all. The appellants' claim arises out of the breach of an express contract which they made with the Danville Company, and not out of the breach of any public duty of the Central Company's.

There are many cases which hold the lessor and lessee jointly and severally liable for personal injuries received by third persons injured in the operation of the railroad. These cases proceed upon the theory that the lessor is liable because it cannot escape its public obligations by a lease of its railroad, and it is therefore liable to any one injured by or through a breach of such obligations. Thus, a passenger on a railroad operated by a lessee is injured; he brings an action against the lessor sounding in tort, and the lessor is held liable because the passenger's right of action sprung out of the breach of a public duty. If the injured passenger should sue the lessor upon his private contract with the lessee he should not recover, because in that event his right of action would spring from the breach of a private contract to which the lessor would be neither party nor privy. Again, a man's cattle is injured through the failure to fence the railroad. The obligation to fence being a statutory duty of the lessor, the lessor would be liable, notwithstanding the lease of the railroad, for the reason that the injury to the cattle would be the result of the breach of the

public duty of the lessor. Instances might be multiplied where the lessor has been held liable for the breach of public duties. **No case has ever been decided which held the lessor responsible for the simple contracts of the lessee.**

The cases upon this subject are collected in the following text books :

3 Wood on Railroads, sec. 490 *et seq.*

19 American & English Ency. of Law, p. 897.

2 Elliott on Railroads, sec. 466 *et seq.*

The distinction between the liability of the lessor for the breach of public obligations and its non-liability upon the contracts of the lessee is well illustrated by the case of a servant of the lessee suing the lessor for damages for personal injury. It is held in this case that, whether the lease is valid or invalid, the lessor is not liable to the lessee's servant, because the servant's right of action flows from the contract with his master.

2 Elliott on Railroads, sec. 472.

East Line & Red River R. Co. *vs.* Culberson, 72 Tex., 375 (10 S. W. Rep., 706).

Baltimore & O. & C. R. Co. *vs.* Pane, 143 Ind., 23 (40 N. E. Rep., 519).

The Louisville and Nashville Railroad Company contracted for the carriage of the United States mail and for the safe carriage of the mail clerk over the Nashville and Decatur railroad, which it had leased. The mail clerk was injured, and brought suit against the Nashville and Decatur Railroad Company. It was held that he was a passenger for hire, but was not entitled to recover against the Nashville and Decatur Railroad Company, the lessor, because there was no privity on the contract of carriage between him and the defendant.

Arrowsmith *vs.* Nashville & D. R. Co., 57 Fed. Rep., 165.

The case of *Singleton vs. Southwestern Railroad Company*, 70 Ga., 464, cited by appellants, draws the distinction between the liability for the breach of the public obligations of the lessor and for the contracts of the lessee. Singleton was a passenger. The Southwestern railroad was leased to the Central Railroad and Banking Company of Georgia. The case of *Jones vs. The Georgia Southern Railroad*, 66 Ga., 558, was cited as an authority for the defendant. The court, distinguishing the Singleton case from the Jones case, held (page 472) that the cases were widely different; that Singleton was a passenger and Jones a servant; the former could rely upon the public duty of the lessor; the latter derived his rights through his contract with his master, the lessee.

"A promise by the general manager of the lessee of a railroad to allow an employé his expenses as part of his salary will not render the lessor liable for the payment of such expenses after the termination of the lease."

Galveston, H. & S. A. R'y Co. vs. Scheidemantel, 24 S. W. Rep., 328.

In 2 Elliott on Railroads, sec. 475, the exact point is covered: "The case of one who founds his claim upon a contract with the lessee after the execution of the lease is essentially different from that of one who bases his right on the tort of the lessee. It is obvious that the lessor cannot be held liable for a breach of the contracts entered into by the lessee. If the action is founded on the contract, there is no privity between the lessor and the person with whom the lessee contracts. The contract gives the person with whom the lessee contracts no right of action against the lessor, for the latter has assumed no obligation whatever."

The appellants assert that if the lease is void the Richmond and Danville must be held to have been the agent of the Central in the operation of the railroad, and therefore the Central would be liable upon the contract.

The answer to this is obvious. There is nothing in the pleadings and absolutely no evidence in the case to warrant the contention that the lease is void. In the final decree on the Rowena Clarke bill this question was specifically not passed upon; neither the master, the circuit court, nor the circuit court of appeals passed upon the question.

It is utterly immaterial, so far as this question is concerned, whether the lease was valid or invalid. The contract for the purchase of the coal was not a part of the lease contract; it was entirely outside and independent of it. It would be a remarkable rule of law which would construe a void lease into an instrument giving the lessee the power to bind the lessor for its (lessee's) private contracts. If the lease was void this did not affect the coal contract; it could not change the parties to it or their relation to each other. The intervenors would have no right of action against the lessor because they made a contract with the lessee in a void lease. The question whether the lease was valid or invalid would be material only where the public were concerned.

The case of *East Line and Red River R. Co. vs. Culbertson*, 72 Tex., 375, states the point well:

"It does not do to say that the lessee would be the agent of the lessor, as applied to this case. This would be a mere fiction not based upon any sound rule of law. The lessee, under an unauthorized lease, may be deemed the agent of the lessor so far as the latter's duties to the public are concerned. Having undertaken, by its charter, to operate its road, the company which it puts in charge of its line may be looked upon as its agent, so far as its general duties under its franchises are concerned; but the duty which is owed to an employ   of the lessee is a special one, and not a duty owed to him in common with the general public."

IV.

Conceding, for the purposes of the argument, that the Central Company is liable upon the Contract, there is no statutory lien in favor of supply creditors.

The appellants contend that the act of the General Assembly of Georgia of February 28, 1876, gives to a creditor who furnished supplies **prior** to the receivership a statutory lien. The act is as follows:

"SECTION 1. *Be it enacted, etc.,* That in all cases where the business of any corporation operating a railroad either wholly or partially, in this State, shall, by an order or decree of any court, be placed in the hands of a receiver for the benefit of the creditors or stockholders of said corporation, it shall be the duty of said receiver to apply the income of said railroad to the payment of the incidental expenses necessary to the carrying on said business, which shall include the wages of employes, wood, cross-ties and other material furnished, and which may be necessary for conducting said business and keeping the property in repair and the damages which may arise from the loss or injury to goods, wares and merchandise received by said road for transportation, and for injuries to persons and property caused by the running of the cars on said road, and for which said road is now liable, as common carriers, by the laws of this State, and a lien is hereby created on the gross income of said road, while in the hands of such receiver, in favor of such creditors or claimants, superior to all other liens under the laws of this State.

"SEC. 2. *Be it further enacted,* That if said receiver should be removed, or a vacancy occur in said office, and a successor be appointed, it shall be his duty to pay the liens herein provided for, according to their date, out of any funds in his hands as such receiver, whether such liability accrued before or after his appointment.

"SEC. 3. Repeals conflicting laws."

The act clearly does not apply to debts created before a receivership, but applies exclusively to receivership debts. The act, in terms, confines the debts to receivership debts. It says: "It shall be the duty of said receiver to apply the income of said railroad to the payment of the incidental expenses necessary to the carrying on said business," and then enumerates what are the incidental expenses necessary to the carrying on of said business, among which is that for material furnished. Again, our construction of the act is the only one which gives any effect to section 2 of the act. The construction of the appellants would make that section superfluous.

The appellants contend that the act must refer to debts created prior to a receivership, because receivership debts were always preferred under the general principles of equity, and that there was, therefore, no necessity to endow such debts with a statutory lien.

The proposition that all receivership debts were preferred under the general principles of equity was by no means accepted as true in this circuit at the time of the passage of this act. In 1875, just two months previous to this act, a case was decided by Judge Woods in this circuit, in which he held that a judgment obtained by a passenger against a receiver for injury inflicted in the operation of the railroad by the receiver was inferior to the lien of mortgage bondholders.

Davenport vs. Receivers Ala. & Chat. R. R. Co., 2 Woods, 519.

In 1886 Judge Pardee decided in the case of Central Trust Co. of N. Y. *vs.* E. T. V. & G. R. R., 30 Fed. Rep., 895, a case which arose in the circuit court for the northern district of Georgia, that a creditor having a judgment for personal injuries against a mortgagor, growing out of torts committed by it before the receivership, is a general creditor, and his judgment is not entitled to priority of satisfaction out of

the earnings of the receivership, and *a fortiori*, not out of the *corpus* of the estate. This act of 1876 was of force when this case was decided, and, of course, if it applied to debts prior to the receivership, the decision of the case must necessarily have been in favor of the judgment creditor.

At the October term, 1894, the supreme court of Georgia decided in the case of Central Trust Co. of N. Y. *vs.* Thurmand, 94 Ga., 735, that supply creditors whose debts arose prior to the receivership were not entitled to a preference. Here again the decision would have been otherwise if the act of 1876 applied to debts prior to the receivership.

The appellants call attention in their brief to the fact that this case arose under what is commonly known in Georgia as the Insolvent Traders' act, and therefore that the act of 1876 could not have applied. We fail to appreciate any reason why the act of 1876 could not have applied to a suit brought under the Insolvent Traders' act. If there is any statutory lien given by the act of 1876 for debts created prior to a receivership it is not at all affected by the manner in which the receivership arose.

But the supreme court of Georgia, at the March term, 1895, in the case of Green *vs.* Coast Line R'y *et al.*, 97 Ga., 15, allowed a creditor who had obtained a judgment for damages for personal injuries against the corporation prior to the receivership a preference over the mortgage debt upon most remarkable and unusual grounds, the court even going so far as to say, "Every direct authority known to us is against us; nevertheless, we are right, and these authorities are all wrong, as time and further judicial study of the subject will manifest." The act of 1876 was not even referred to in this decision. Surely if the court had thought that the act of 1876 was applicable to debts antedating the receivership it would not have gone out of its way to give a creditor a preference upon such extraordinary so-called equitable reasons.

In our brief in the circuit court of appeals we suggested

that that part of the act of 1876 which refers to injuries to persons may have been intended to meet two decisions of the supreme court of Georgia, rendered in 1875 :

Henderson vs. Walker, 55 Ga., 481.

Thurmand vs. Railroad, 56 Ga., 376.

These two cases decided that the receiver of a railroad was not liable to one of his employés for injuries inflicted by the negligence of a fellow-servant. Railroad companies were so liable under a special statute. Receivers not being mentioned in the statute, and the statute being in derogation of the common law, the court held that the rule of liability with respect to receivers was the common-law rule and not the statutory rule.

These cases decided nothing else, and the question of antecedent debts was not involved.

Since our brief in the circuit court of appeals was written the supreme court of Georgia, in the case of *Patterson vs. C. R. R. B'k'g Co. et al.*, 97 Ga., 152, has held that the rule announced in *Henderson vs. Walker* and *Thurmand vs. Railroad* was still the law in this State. The appellants in their brief upon the petition for certiorari say that the supreme court of Georgia has held in this case that the act of 1876 did not affect the cases of *Henderson vs. Walker* and *Thurmand vs. Railroad*, thus implying that the act did not apply to receivership debts. The *Patterson* case did not even refer to the act of 1876. The effect of the *Patterson* case was to hold that the act of 1876 had no effect upon the court's decision in the *Henderson* and *Thurmand* cases, that a receiver was not liable to his own employé for the negligence of a fellow-servant. Only this fellow-servant question was involved, and by ignoring the act of 1876 in the *Patterson* decision, the Georgia court has impliedly held that that act did not change the fellow-servant rule in its application to receivers; only this and nothing more. The court did not thereby, even by implication, hold that the act of

1876 did not apply to the receivership claims. The only effect of the decision in the Patterson case is to hold that if the latter part of the act, which enumerates injuries to persons as one of the incidental expenses of a receivership, was intended to change the fellow-servant rule of the Henderson and Thurmand cases, the language of it did not have that effect.

Appellants' counsel refers in his brief to decisions by the circuit court which apply this Georgia statute to debts created prior to the receivership, and says we know of such decisions. In this he is mistaken; we do not know of them, and if the learned judge in the court below has made such decisions, it is very evident from his opinion in this case that he has since changed his mind.

V.

Conceding that the Central Railroad and Banking Company of Georgia is liable upon the contract, appellants are not entitled to an equitable preference over lien or other creditors.

The question which must be met upon this phase of the case is, whether there are such equitable circumstances which surround the claim of the appellants as to give them an equitable preference over all other creditors and over the mortgage lien.

The circuit court of appeals seems to be of the opinion that the mere fact that the debt was one for supplies, and created within a short time previous to the receivership, was sufficient of itself to give the equitable preference.

We contend that before the equitable preference can be given to the unsecured creditor, and the vested contract lien of the mortgage displaced, it must appear that not only the debt belonged to the favored class, but that, in addition to

this, there has been a consent on the part of the mortgagee, either express or implied, from peculiar circumstances of the case, sufficient to raise an estoppel ; or, that such a long time has elapsed between the default on the mortgage and the receivership as will impute laches to the bondholders, and make it equitable that the bondholder should pay the debts which he would have necessarily contracted if he had availed himself of his remedy ; or that, by a diversion of income, the bondholder has reaped a benefit to the prejudice of the supply creditor which equity will not allow him to retain ; in other words, he has received something which equity will compel him to restore.

Ever since the announcement of the doctrine of equitable preference in *Fosdick vs. Schall*, 99 U. S., 235, this Court has been carefully confining the claims to cases where the equity of the supply creditor is very strong, and the limits within which the preference is allowed have been very much narrowed.

In *Huidekoper vs. Locomotive Works*, 99 U. S., 258, it was held that the vendor of a locomotive occupied "the position of a general creditor, with no special equities in his favor."

In *Miltenberger et al. vs. Logansport, etc.*, R'y, 106 U. S., 286, the majority of bondholders expressly consented to the priority of ticket and freight balances, and the trustee and minority bondholders, who intervened to contest their priority, were estopped by their laches from denying their acquiescence. It must be observed in this case that the receiver had already paid the unsecured debts for ticket and freight balances. The Court remarked :

"Many circumstances may be suggested which may make it necessary and indispensable to the business of a road and the preservation of the property for the receiver to pay pre-existing debts of certain classes out of the earnings of the receivership or out of the corpus of the property under the order of the Court, with a priority of lien, yet the discretion to do so should be exercised with great care. The pay-

ment of such debts stands *prima facie* on a different basis from the payment of claims arising under the receivership, while it may be practically within the principle of the latter."

This was the first case in which this Court actually applied the doctrine of *Fosdick vs. Schall*.

Hale vs. Frost, 99 U. S., 389, is similar to the *Bowen* case, hereinafter referred to. In this case the bondholders were constructively consenting to a diversion of income to their benefit by neglecting, under peculiar circumstances, for a long time after default to foreclose the mortgage, during the period of which neglect the diversion occurred.

Union Trust Co. vs. Souther, 107 U. S., 591, shows clearly the element of consent. The Court, at the inception of the litigation, passed an order that the supply and labor debts incurred within six months should be paid from net earnings. The Court said: "The income of the receivership, instead of being applied in accordance with the order to pay debts for supplies and labor, was used with the consent, and, it may be inferred, at the request of the bondholders, to buy additional grounds and rolling stock," etc., and the Court concluded that under these circumstances there was no impropriety in appropriating the money from the sale of the mortgage estate to pay the creditor specially provided for when the receiver was appointed.

In *Burnham et al. vs. Bowen*, 111 U. S., 776, the mortgage was made June 1, 1871, and no interest was ever paid on the bonds, but the foreclosure did not occur until 1875. A coal bill was allowed priority. The ground of the decision was that the mortgage being in default and the mortgagee permitting the road to be operated by the company could not object to paying a bill which it (the mortgagee) would have had to pay if it had proceeded to foreclose. The Court said:

"The debt due Bowen was incurred to keep the road running, and thus preserve the security of the bondholders. If

the trustees had taken possession under the mortgage, they would have been subjected to similar expenses to do what the company, with their consent and approbation, was doing for them."

In the case of *Union Trust Co. vs. Morrison*, 125 U. S., 591, in which a surety on railroad bonds was allowed a preference over mortgage creditors, there were three reasons for the preference: (1) The express consent of the mortgagees. (2) Laches in failing to pursue the remedy of foreclosure for a long time. (3) An actual diversion of the income.

In the case of *St. Louis, Alton & T. H. R. R. vs. Cleveland, etc., R'y*, 125 U. S., 658, a claim for rent under a lease was denied priority. The claim was pressed upon the theory that it was an unpaid operating expense, and therefore entitled to a preference. The Court denied that this of itself was sufficient and said:

"Admitting, therefore, that the reasonable rent of the leased line accruing to the petitioner was a proper charge upon the gross income of the Indianapolis & St. Louis Railroad Company as a part of its current operating expenses before any net income could arise applicable to the payment of interest on the mortgage bonds, it must still be essential to entitle petitioner to the relief prayed for that the arrearage due on account thereof has arisen by the diversion and misappropriation of the fund that ought to have been applied to its payment to the use and benefit of the mortgage bondholders."

In the case of *Kneeland vs. American Loan & Trust Co.*, 136 U. S., 89, where this whole subject of preferential claims is discussed, the Court concluded that the claim for rent of rolling stock was not entitled to a preference over the mortgages, because there was the absence of any act from which it could be inferred that the mortgagees had consented to the preference, and that there were circumstances that raised an estoppel. The Court said:

"It is the exception and not the rule that such priority of liens can be displaced. We emphasize this fact of the

sacredness of contract liens for the reason that there seems to be growing an idea that the chancellor, in the exercise of his equitable powers, has unlimited discretion in this matter of the displacement of vested liens."

In the case of *Morgan's, etc., Co. vs. Texas Central R'y*, 137 U. S., 171, advances made to the railroad for the payment of operating expenses and taxes were denied priority of payment. The Court, in referring to the doctrine in *Fosdick vs. Schall*, remarked:

"The property being in the hands of the court for administration as a trust fund for the payment of encumbrances, the court, in putting it in condition for sale, may, if needed, recognize the claims of materialmen and laborers, and some few others of a similar nature, accruing for a brief period prior to its intervention, where current earnings have been used by the company to pay mortgage debt or improve the property instead of to pay current expenses under circumstances raising an equity for their restoration, as, for instance, where a company being insolvent and in default is allowed by the mortgage bondholders to remain in possession and operate the roads long after that default has become notorious, or where the company has been suddenly deprived of the control of its property, and the pursuit of any other course may lead to cessation of operation."

In the case of *Quincy, etc., R. R. vs. Humphreys*, 145 U. S., 82, the claim of priority in favor of rentals was disallowed because the fact that there was an immense floating debt for supplies precluded the inference that there had been a diversion of earnings applicable to the payment of rental, and upon the further ground that there was no consent on the part of the mortgagee to have the claim charged upon the corpus of the property.

In *Thomas vs. Western Car Co.*, 149 U. S., 95, a claim for car rental that accrued prior to the receivership was disallowed, there being no equitable considerations for the allowance, as in the *Miltenberger* case.

Testing this case in the light of the decisions which we have cited, there does not appear any equitable reason why the appellants should be given a preference, because —

First. It must be observed that **the court did not pass any order** at the inception of the receivership for the payment of creditors of this class. We do not mean to be understood as contending that because such an order was not passed at the inception of the litigation, the preference cannot now be allowed. We call attention to the fact to show that the court did not make the payment of such debts a condition of the receivership and to negative the idea that there may have been any consent to the payment of such debts on the part of the mortgagee.

Second. **There has not been any laches** on the part of the mortgage creditors. As soon as the opportunity arose the mortgagees took advantage of their rights. The default on the first mortgage took place on July 1, 1892. The mortgagee could not foreclose until six months had elapsed (Record, pp. 12, 13). His foreclosure suit was begun January 23, 1893, and the receiver who had theretofore been appointed at the instance of the mortgagor was continued as receiver under the foreclosure bill.

Third. **There has been no diversion** in the case in the sense in which that term is employed in the decisions of this Court. The decisions are to the effect that the diversion must not only be to the prejudice of the supply creditor, but it **must have given some advantage to the mortgagee which he ought not equitably to have**. Here was a case in which a railroad company was put in the hands of a receiver on the 4th of March, 1892, upon the suit of a stockholder, in which there was no suggestion of the insolvency of the mortgagor company. For a year previous to this time the income arising from the operation of the railroad of the mortgagor had been used by its lessee,

and all the income on its bonds and stocks had likewise been used by its lessee. The lessee had agreed to pay the interest on all lessor's obligations. The January interest was paid by the Danville Company, and not by the Central Company, the mortgagor. Under all these circumstances can it be contended that there has been such a diversion from the current income of the Central Company as would give an unsecured supply creditor a preference over the vested contract lien of the mortgagee? The circuit court of appeals said: "In this case, the equities are especially favorable to the intervenors, for it appears that there was a diversion of the income for the payment of interest upon bonds of the Central railroad in January, 1892, some two months before the receivers were appointed," etc. If this is an equitable ground for the allowance of a preference, it is a dangerous thing for a mortgagee to receive the interest on his bonded debt. There is not a scintilla of evidence in the case to show that the payment of the interest on the bonds was a diversion of the current income. There is not even any evidence in the case showing whether or not the income which arose from the operation of the railroad was sufficient to meet the claims of all its creditors, or whether it was entirely inadequate for that purpose. There is nothing in this case to indicate that debts for operating expenses had been permitted to accumulate in order to enable the mortgagor to meet the interest on its bonded debt, and thus avoid insolvency or tide over a temporary embarrassment, or that the mortgagee was upon any notice that the interest upon these bonds was being paid to the detriment of the supply creditors of the railroad. We do not understand that an equity court will allow a supply creditor a preference merely because the interest on the bonded debt has been paid. Viewing this case in the light of the spirit of the decisions of this Court, it cannot be said that the mere payment by the Danville Company of the interest upon the bonds of the Central railroad in January, 1892, when no one dreamed of

an insolvency, is such a diversion of the income of the mortgagor as to prefer a supply creditor.

Fourth. The **only other ground** upon which the circuit court of appeals put the allowance of the preference was their finding that the **receivers expended from the income for improvements** on the railroad property a sum much larger than the claims of the intervenors. The following statement appears in the agreed statement of facts (Record, p. 13): "It is a fact that since the receivership the receivers of the Central Railroad & Banking Company of Georgia have expended [for] betterments in its railroad lines from the income of the road during the receivership a sum much larger than the entire claim of the intervenor." The term "betterments" is rather vague and indefinite. In its ordinary acceptation, as applied to railroad properties, it represents such purchases as new equipment to replace old, new rails to replace old rails, and numerous other expenditures which may not be absolutely essential to the operation of the railroad, but which may be necessary to the economical operation of the railroad and to the advantage of all persons concerned, the unsecured creditor as well as the secured.

This receivership was begun on March 4, 1892. The appellants became parties to the litigation on May 26, 1892. The Farmers' Loan and Trust Company, the trustee of the bondholders under the first mortgage, did not become a party until July 4, 1892, when it was made a defendant to the bill filed by the Central Company. It was not made a party defendant in the stockholders' bill of Mrs. Rowena M. Clarke. The foreclosure bill was filed January 23, 1893. The income of the railroad was pledged under the mortgages (Record, p. 12). The expenditures made by the receivers for betterments were made while the appellants were parties to the litigation and without any objection from them. Until January 23, 1893, the mortgagees had nothing whatever to do with the expenditures of the receivership.

They were all made, it is fair to assume, under the order of the court, and were necessary for the preservation of the *res*. **It does not appear that the betterments were of such a character as to substantially improve the mortgage property.** It does not affirmatively appear that the mortgage security has been enhanced with the consent or connivance of the mortgagee at the expense of the unsecured creditors, and the mere fact that on a large system of railroads more than \$40,000 was expended in what is ordinarily understood by the word "betterments" ought not to be sufficient alone to give the unsecured creditor the coveted preference.

Fifth. If appellants' case is to be strengthened by proof of expenditures for betterments, it **must affirmatively appear that these expenditures were made before the court had sequestered for the use of the bondholders the income which was pledged to them** and which after January 23, 1893, became theirs; but it does not appear whether these expenditures were made by the receivers under Mrs. Clarke's bill or under the bill filed by the Central Company or under the trustees' bill for foreclosure. The stipulation on this subject was made after appeal, which was March 31, 1894. The receivership was then twenty-five months old, and fourteen of these months were under the foreclosure bill. It is more fair to infer that the expenditures were made during these fourteen months than to infer that they were made during the eleven preceding months.

But, even if we should infer otherwise, inference will not do. If it be contended that these expenditures can affect the case at all (which we deny), then it is incumbent on appellants, under the decisions we have cited, to show affirmatively that they were made before the bondholders had asserted their rights and sequestered for their benefit the income which was theirs. Not only have they not shown this, but they have by inference proven that the receivers

expended for improvements only money which belonged to the bondholders. It should not be taken from them twice.

VI.

The appellants are not entitled to recover against the Central Railroad and Banking Company of Georgia, nor are they entitled to a preference as to the coal which was found in the bins of the Central railroad at the time of the appointment of the receivers and subsequently used by them.

The appellants cannot recover for this portion of the coal, for the reason that it was sold by them to the Richmond and Danville Railroad Company under a contract made with that company to which the Central Railroad and Banking Company of Georgia was neither a party nor a privy.

When the railroads of the Central Company were turned over to the Danville Company the latter company also received fuel and other material and supplies (see the lease, Record, p. 22), and it is proper to assume that there was at that time a reasonable amount of coal in the bins, which was taken possession of by the Danville Company. When the Danville Company surrendered possession it was, under the twenty-first article of the lease (Record, p. 30), under obligations to return the same amount of coal; and when the receivers took possession of the coal in the bins they only **took possession of that which belonged to the Central Company** under the solemn contract of the Danville Company. The Central Company had turned over to the Danville Company all its material, supplies, and fuel and all its property, and all of the earnings of the Central had been appropriated by the Danville Company. (Record, p. 8, last line.)

The Central Railroad and Banking Company of Georgia

should not be held liable for the coal found in the bins, because it is **incapable of proof whether the coal found in the bins was the coal of the intervenors or not.** The intervenors entered into a mutual agreement (Record, p. 63) that each of them would claim and demand of and against the receiver of the Central railroad such amount of the total coal found in the bins or the value thereof at the time of the receiver's appointment as is in proportion to their respective total debts. The master found (Record, p. 63) that the coal companies which entered into this agreement were the only coal companies that furnished coal used in the operation of the Central railroad for a year prior to the receivership, and from this concluded that the coal in the bins belonged collectively to the coal companies which entered into said agreement. It is a matter of common knowledge that the last coal which was furnished to the railroad company would probably be the first used, and therefore there is no reason why the master should have concluded that this coal which was found in the bins of the Central railroad was the coal of these coal companies, rather than the same coal which was in the bins when the railroad was turned over to the Danville Company. The coal was incapable of identification and was not identified.

VII.

SUMMARY.

The judgment of the circuit court should be affirmed, with costs, because—

First. There was no contract between the Central Company and the appellants.

(a.) Appellants made an express contract with the Danville Company and furnished the coal on the Danville's credit.

(b.) They did not make any contract with the Central Company, and the contract which purported to be in its name was made by one entirely unauthorized by and disconnected with the Central.

(c.) The Danville Company, although it had the right to operate the lines of the Central Company, had no right to bind the Central corporation by a contract.

Second. The Georgia statute of 1876 gives no statutory lien in favor of supply creditors. It applies only to debts contracted during the receivership.

Third. No preference in favor of appellants should be decreed, because—

(a.) As to coal delivered and consumed prior to the receivership, the intervenors have asked for no preference, but only for a plain judgment.

(b.) For the coal delivered and consumed after the receivership they have been paid.

(c.) For the coal delivered before and consumed after the receivership they have asked only for judgments against the receiver.

(d.) There is no proof that the coal which the receivers found in the bins was furnished by the appellants, but whatever was there was properly taken possession of by the receivers.

(e.) There has been no diversion of income by payment of coupons. All that the record shows is that the Danville Company, which received all of the income from the railroad and all of the income from investments of stocks and bonds, paid coupons maturing two months before the receivership.

(f.) There has been no diversion of income by expenditures for improvements. Even the income which was expended for "betterments" was pledged to the mortgagee and had been previously sequestered for its benefit by the appointment of a receiver.

(g.) There has been no laches on the part of the mortgagee; it acted as soon as its rights accrued.

(h.) There has been no consent, express or implied, by the mortgagee.

Respectfully submitted.

ALEXANDER RUDOLF LAWTON,

THOMAS MAYHEW CUNNINGHAM, JR.,

For Appellees.

1. 870. 1709 100
JAN 13 1896

In the Supreme Court of the United States.

CLERK.

Brief of Willam Lloyd Garrison, Jr. vs. (on pet.)

No. 218

Filed Jan. 13, 1896.

ROWENA M. CLARKE ET AL

vs.

THE CENTRAL R. R. AND BANKING

CO. OF GEORGIA ET AL.

Bill, Dependent Bills, &c.

THE CENTRAL R. R. AND BANKING

CO. OF GEORGIA

vs.

THE FARMERS LOAN AND TRUST

CO. OF NEW YORK ET AL.

Intervention of the
Virginia & Alabama Coal
Co. and Sloss Iron and
Steel Company.

THE FARMERS LOAN AND TRUST

CO. OF NEW YORK

vs.

THE CENTRAL R. R. AND BANKING

CO. OF GEORGIA ET AL.

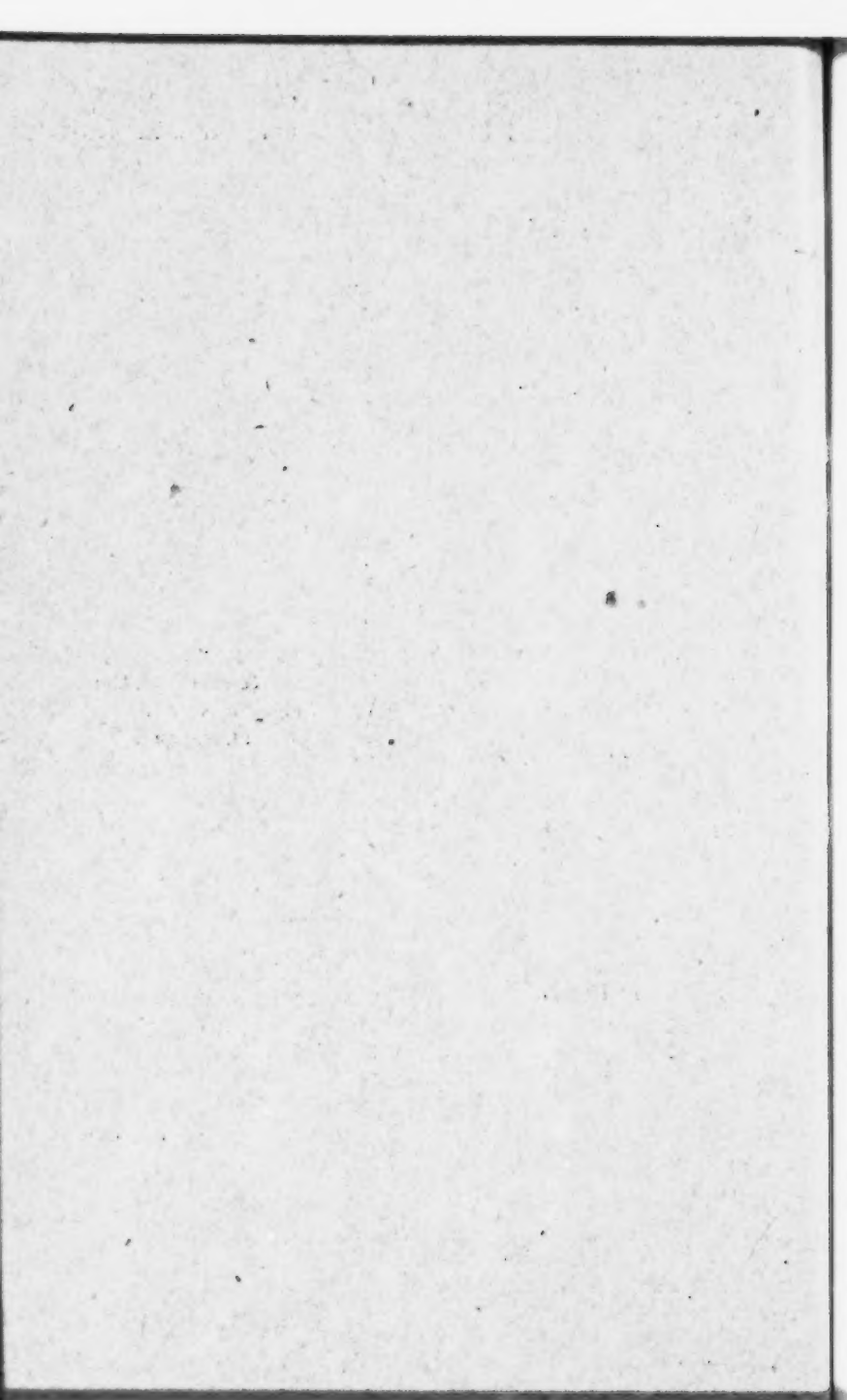
ANSWER AND BRIEF IN REPLY TO

*Petition of Central Railroad & Banking Company of Georgia
et al. for Certiorari from Decree of Circuit Court of Appeals
for the Fifth Circuit.*

*It is a wise maxim never to lay down a principle of wider application than is warranted
by the matter in hand.—Macaulay.*

HILL, HARRIS & BIRCH,

Solicitors for Respondents.



ROWENA M. CLARKE ET AL.

VS.

THE CENTRAL R. R. AND BANKING
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CO. OF GEORGIA ET AL.

ANSWER AND BRIEF OF HILL, HARRIS & BIRCH IN REPLY TO

*Petition of Central Railroad & Banking Company of Georgia
et al. for Certiorari from Decree of Circuit Court of Appeals
for the Fifth Circuit.*

STATEMENT OF THE CASE.

The decision of the Circuit Court of Appeals is reported in
66 Fed. Rep. 803.

The syllabus is as follows :

I. RAILROAD RECEIVERSHIPS—PAYMENT FOR SUPPLIES.

The C. Ry. Co., in June, 1891, was leased to the R. Ry. Co., which went into possession, and operated the C. Ry. Co. lines until March, 1892, when a receiver of the C. Ry. Co. was appointed, and took possession of its property. After the lease, and before the receivership, a contract was made for a supply of coal to the C. Ry. Co., under which coal was delivered both within six months before and after the receivership, some of which was used before the receivership, and some was on hand when the receiver was appointed, and was taken and used by him, and some was delivered to and used by him. *Held*, that, without regard to who made the contract, the coal having been furnished for and used in the operation of the C. Ry. Co.'s lines, for the purpose of carrying on its business, the receivers should be directed to pay not only for that which had been delivered to them, but for that which had previously been delivered to the road and used, either before or after the receivership.

2. SAME. PAYMENT FROM CORPUS OF ESTATE.

It appeared that before the receivership there had been a diversion of income for the payment of interest on bonds, and that the receiver expended for betterments, out of the income, a sum larger than the claim of the sellers of the coal. *Held*, that payment for the coal should be made out of the corpus of the property, if the income was insufficient.

The statement of the case by the Circuit Court of Appeals, is as follows:

"This is a suit brought by intervention for coal furnished by the intervenors, the Virginia & Alabama Coal Company and the Sloss Iron & Steel Company, for the operation of the Central Railroad & Banking Company of Georgia while being operated by the Richmond & Danville Railroad Company. All the coal charged for as furnished before the appointment of receivers for the Central Railroad Company was furnished within less than six months prior to such appointment. The Central Railroad was leased to the Georgia Pacific Railroad Company; the Georgia Pacific was leased to the Richmond & Danville Railroad Company; and the latter company, under color of this lease, was operating the Central Railroad lines. On June 1st, 1891, the Central was leased to the Georgia Pacific Railroad Company; and on the same day the Richmond & Danville, (to which the Georgia Pacific was already leased) went into the possession of the Central and operated the same till March 4th, 1892, at which date the receivers of the Central were appointed. The lease transferred not only the main lines of the Central, but various lines which it controlled by lease and by stock ownership. It further provided that the lessees should take possession of the leased property as a running road, taking such cash and credits as were then due, and on the other hand obligating the lessees to pay the current debts of the lessor company for supplies, etc. *The lease also provided that the lessee should pay the interest on the bonds and debentures of the Central and of the lines upon which the Central had guaranteed interest on bonds, and also dividends on the stock of the Central.* It appears from the agreed statement of facts that the semi-annual interest on the \$5,000,000 of mortgage bonds of the Central was paid in January, 1892, (the order appointing the Receiver being dated March 4th, 1892.) It is also an agreed fact that during the receivership the Central expended for betterments on its railroad lines, from the income of the roads during the receivership, a sum much larger than the entire claim of the intervenors. To set aside the lease, Mrs. Rowena M. Clarke, a stockholder, brought her bill against the Central Railroad under which a receiver was appointed March 4, 1892. The Richmond & Danville and Georgia Pacific Companies disclaimed any rights under the lease, and no issue was raised in relation thereto such as to require decision as to the validity or invalidity of the lease, and such question has not been determi-

ined. Shortly afterwards the Central Railroad filed a dependent bill, under which the same receivership was continued, and under which it was also extended to the Port Royal & Augusta Railroad and the Port Royal & Western Carolina Railroad. The Farmers' Loan & Trust Company, the trustee for the mortgage bondholders of the Central Railroad, afterwards filed its dependent bill in said cases, under which the same receivership was continued. All these cases were afterwards consolidated. On July 13, 1891, a contract was made with the Virginia Company for the purchase of a year's supply of coal to operate the Central lines. The contract stipulated for 90 cents per ton of 2,000 pounds, to be delivered on cars at the mines, and to be shipped at times and in quantities to suit. In pursuance of this contract the Virginia Company, between September 16, 1891, and March 4, 1892, shipped to the Division Superintendents (Curran, at Macon, Dill, at Savannah, and Epperson, at Augusta), coal to the amount (per contract 90 cents per ton) of \$26,607.44. The Sloss Company, under the same contract, by the consent of both parties, supplied coal to the amount of \$14,359.38, but at an agreed price of 95 cents a ton. All bills were made out in the name of the Central Company. The price at which the Central Railroad got the coal was 7 or 8 cents per ton less than the market price at that time. It appears that while much of the coal was used in the operation of the Central Railroad prior to the receivership, a large part of the coal delivered was in its bins at the time of the appointment of the receivers on March 4, 1892, and went into their possession and was used by them, and that some of the coal was received after that time, and likewise went into the possession of the receivers. *An agreement of counsel is found in the record as follows: 'It is agreed that the coal described in the exhibit to the intervention by amounts and dates of shipment was delivered by the intervenor to the railroad lines of the Central Railroad & Banking Company of Georgia, which was being operated by the Richmond & Danville Railroad Company till the 4th of March last, at the dates and in the amounts shown by said exhibits.'* It, however, appears that some of the coal delivered to the Central Railroad was used by several other railroads known as the Port Royal & Augusta, the Port Royal and Western Carolina and the Charlotte, Columbia & Augusta Railroads. The Master's Report finds that coal of the Virginia Company worth \$13,735.89 was used prior to the receivership; that coal worth \$6,700.50 was in the bins at the time of the appointment of the Receiver, and that coal worth \$6,171.30 was received by the Receiver after his appointment, and that, of the coal of the Sloss Company, coal worth \$10,320.17 was used prior to the appointment of the Receiver; that coal worth \$3,818 was in the bins March 4, 1892, and that coal worth \$776 arrived after the appointment of the receivers. The Circuit Court held the Central Railroad and the receivers liable only to the extent of the

coal which was delivered after March 4th, 1892, (holding them liable at the contract price,) and rendered a decree accordingly. From that decree the intervenors appealed."

OBJECTIONS TO STATEMENT OF THE CASE MADE BY PETITIONERS.

1. It is stated on page 3 of the petition that "a succinct statement of the facts and issues in the case, *as presented to the Circuit Court of Appeals*, is hereto attached as Exhibit B, and made part of this petition."

Exhibit B is a reproduction of the statement of the case made in the briefs of counsel for the Central Railroad Company, in the Circuit Court of Appeals, except that it superadds at the end thereof the following new paragraph :

"(23.) It is not true, as petitioners are advised, that it appears from the record that there was a diversion of the income from the earnings of the leased railroad to the payment of the interest on the bonds of the Central R. R. & B. Co. of Georgia, in January, 1892, within the meaning of the rule in Fosdick's case. What the record discloses is that the lessee had transferred to it, under the lease, not only the road, but the income from several-million dollars of stocks and bonds owned by the Central Company, which was more than sufficient to pay the interest on its mortgage debt (printed transcript, pp. 23, 29). And that the lessee agreed to pay, as part of the rental, the interest on the mortgage indebtedness of the Central Company (printed transcript, p. 34), and that the interest on the mortgage debt falling due in January, 1892, was paid. This is the full extent of the stipulation in the record on this point (printed transcript, p. 15, clause 14). The contention of the Central Company, as made by the record, is that the income of the railroad during that period was appropriated by the Danville Company, and that issue is pending elsewhere (printed transcript, p. 10)."

The same point is urged in the petitioner's briefs, page 4, par. 10.

But an examination of the statement of the case and brief of the argument made in the Circuit Court of Appeals by the appellee (the petitioner here) will show that NO SUCH CONTENTION WAS INTIMATED OR URGED IN THAT COURT.

Even if it were admissible now to make this new contention, it is enough to say that the record does not support it.

The references made by petitioner are to pages 23 and 29 of the printed record. (The agreed statement of facts ends on page 19.) Nothing is shown by these references to the lease except that by its terms the Central turned over certain stocks and bonds to the lessee company. There is no evidence whatever that the latter company ever received one dollar of income therefrom; paragraph 23 above quoted rests upon a mere inference, wholly unauthorized; an inference not even suggested in the Circuit Court of Appeals.

2. Objection is made to the following statement on page 2 of the petition:

"Petitioners aver that while in and by the said opinion and judgment said Circuit Court of Appeals has committed manifest error, in a matter involving a considerable amount in the particular intervention in which the judgment is rendered, yet this expresses but a very small part of the results of the judgment as it affects these petitioners, as there are numerous other intervening petitions and proceedings pending in the main cause of similar character amounting to several hundred thousand dollars, seeking to subject the trust property in the hands of the Receivers of the Central Railroad & Banking Company of Georgia to their payment, the proper disposition of which turn upon a correct decision of the same legal question involved in this cause, and a review of which on *certiorari* is sought by this petition."

A statute of Georgia, hereinafter quoted in full, gives a lien upon the gross income of a railroad in the hands of a receiver in favor of creditors "for the incidental expenses necessary to the carrying on of said business, which shall include the wages of employees, wood, cross-ties and other material furnished," etc.

In our brief in the Circuit Court of Appeals (page 23) we said:

"Although the decisions are not reported, yet, inasmuch as they are known to opposing counsel in this case, it is permissible to state that the court below has construed this Georgia statute to refer to the payment of current debts for supplies, etc., contracted prior to the appointment of the receiver; and in pursuance of that construction the court has given judgment against the Central and its Receivers for wood and other materials furnished to the Richmond and Danville while it was operating the Central, and which the Danville used in the operation of the Central. It is also proper to state that the court below distinguished his ruling in such cases from the decision which is the subject of the present appeal; though we are wholly unable to see the distinction."

Counsel for Appellees (the petitioners here) replied to the brief, but took no issue with the statement of fact above made.

In the nature of the case, it is difficult to meet a general statement, such as that now under consideration; but, as counsel practicing in the court in which this case originated, we have seen numerous orders made by the court directing the Receivers of the Central to pay for materials furnished the Richmond & Danville while it was operating the Central; and while our knowledge of the matter is only general in its character, we know of no appeals from such orders. But we submit that the importance of the case to the party applying for a writ of *certiorari* is not material: that this is not a case of general importance, we have argued, at the conclusion of this brief.

BRIEF OF THE ARGUMENT.

We here print the decision of the Circuit Court of Appeals, now sought to be reversed: (66 Fed. Rep. 805-7.)

" Before PARDEE and McCORMICK, Circuit Judges, and TOULMIN, District Judge.

" TOULMIN, District Judge, after stating the case as above, delivered the opinion of the Court.

" From what appears in the record we are satisfied that the debts claimed by the intervenors for coal delivered prior to the appointment of the Receivers, were current debts for operating expenses of the Central Railroad lines, made in the ordinary course of business, to be paid out of the current earnings. The coal was purchased in the name of the Central Railroad. It was delivered on its lines, and was furnished for their operation, and, with the exception of a small amount, was used by them. There was evidence that the contract for the purchase of the coal was made by the Central Railroad, and the Master so found. The Circuit Court, however, differed with and overruled the Master in such finding.

" In our view of the case, it makes no difference whether the contract for the purchase of the coal was made by the Central Railroad or by the Richmond & Danville Railroad. The coal was delivered on the lines of the Central Railroad, and was furnished for and used in their operation. The Richmond & Danville Railroad Company had the possession of the Central Railroad lines, was operating them, collecting their revenues, and was under the obligation to pay out of their earnings the current expenses and the interest on their bonds. But whether that pos-

session was lawful or otherwise, or whatever the relations between the two Railroads may have been, we think that the Central Railroad was liable for the necessary supplies furnished and used for the purpose of keeping its road in successful operation, and carrying on its business as a common carrier. Such debts are preferential, and the persons to whom they are due are entitled to have the income of the Receivership used in the payment of them, as the Railroad Company would have been bound in equity and good conscience to use it if no change in the possession of the property had been made. *Farmers' Loan & Trust Co. vs. Kansas City, W. & N. W. R. Co.*, 53 Fed., 182; *Burnham vs. Bowen*, 111 U. S., 776, 4 Sup. Ct., 675; *Fosdick vs. Schall*, 99 U. S., 235. In this case the equities are especially favorable to the intervenors, for it appears that there was a diversion of the income for the payment of the interest on bonds of the Central Railroad, in January, 1892, some two months before the Receivers were appointed; and it also appears that the Receiver expended from the income for improvements on the railroad property a sum much larger than the claims of the intervenors. Our opinion is, that the Receivers are liable not only for the coal which they received after their appointment from unloaded cars, but that they are equally liable for the coal which was in the bins at the date of their appointment, and which they took possession of and used in the operation of the Central Railroad lines, and that, as representatives of the Central Railroad & Banking Company of Georgia, they are also liable for the coal delivered to and used by the Central Railroad lines prior to their appointment, and which was then unpaid for. For that portion of the coal used at Augusta by the three railroads there, as shown by the evidence, the Central Railroad and the Receivers are liable, except as to that used by the Charlotte, Columbia & Augusta Railroad. It appears that the other roads mentioned were under the control of the Central Railroad and were a part of its system. The Charlotte, Columbia & Augusta Railroad was not. It does not appear that the Court, in appointing the Receivers, made any provision for the payment of the intervenor's claims, but as there is evidence in the record showing that current earnings, before the Receivers were appointed, were diverted to paying interest on the bonded debt, and that after their appointment they made large permanent improvements on the railroad property, the intervenors should be allowed payment of their claims from the corpus of the property, should the earnings in the hands of the Receivers be insufficient to pay them.

"The intervenors are only allowed the price stipulated for, and which they expected to receive, when the coal was delivered, and which is, in fact, the price claimed in their petition of intervention. In our opinion, the view which the Circuit Court took of this case was an erroneous one, and the decree must be reversed, and the case is remanded to the Circuit Court with in-

structions to enter a decree in favor of the intervenors for the amounts respectively due them for coal delivered to the lines under the control and forming a part of the system of the Central Railroad & Banking Company of Georgia, as shown by the evidence in this case, including the coal furnished before the appointment of the Receivers, and that found in the bins at the time of such appointment, and of which the Receivers took possession, as well as the coal delivered to the Receivers after their appointment, the amount due being determined by the contract price, and an order that they recover from the Central Railroad & Banking Company of Georgia and the Receivers of the same, such sums thus found to be due. No decree will be entered in favor of the intervenors for the payment of that portion of the coal which was used by the Charlotte, Columbia & Augusta Railroad Company.

"Reversed and remanded."

It is to be noted that the decision was unanimous.

WHAT IS THE TRUE LEGAL EFFECT OF THE DECISION OF THE
CIRCUIT COURT OF APPEALS.

The petitioners state the decision of the Circuit Court as follows, (petition, page 4):

"It is now for the first time laid down as a rule that when a railroad company leases its road to another company, it does so with the understanding that upon the abrogation or termination of the lease, the entire supply indebtedness and operation expenses of the lessee company which it may through accident or design leave unpaid becomes a charge and lien upon the property of the lessor company."

We respectfully submit that this is an erroneous statement of the ruling made by the Circuit Court of Appeals.

That ruling cannot properly be interpreted except in connection with the facts of the case. The above statement leaves out of sight three important elements of the decision. It is not to be assumed that the Court violated the maxim which limits the application of a principle to the "matter in hand."

(a) Although the Court did not rest the case on the fact that the contract for the coal was made with the Central, (though the Court states that there was evidence to show this, and the Master so found,) the Court does call attention to the agreed fact that the *delivery* of the coal was *to* the lines of the Central. (Record,

page 144.) and was "furnished and used in their operation," and the Court finds as a fact that "*the coal was purchased in the name of the Central Railroad.*"

(b) "It appears that there was a diversion of the income for the payment of the interest on the bonds of the Central Railroad, in January, 1892, some two months before the Receivers were appointed."

(c) "It also appears that the Receivers expended from the income for improvements on the railroad property a sum much larger than the claim of the intervenors."

It cannot be fairly claimed that the Circuit Court of Appeals has laid down a rule that is not limited by the facts in the case upon which the decision rests. So construed, the decision does not warrant the petitioners' representation of its legal intentment, but may be stated as follows :

Where it appears that one railroad was operating another under color of a lease and that the coal used in running the engines of the lessor company was (not furnished to the lessee company as part of the coal used in operating its system of railroads but) furnished and delivered specifically to the lines of lessor company; and where the lessee company diverted its income from the payment for such coal to the payment of the interest on the lessor company's bonds; and where shortly after such payment, a Receiver of the lessor company was appointed at the instance of a stockholder assailing the lease (neither the lessee nor lessor asserting its validity), which Receivership was extended to bills filed by the lessor company for liquidation and by the mortgage creditor for foreclosure; and where it was made to appear that a large part of such coal was on the bins of the lessor company when the Receiver took charge and that he used the same—that some of it was in transit and was received and used by the Receiver—that the remainder had been delivered to the lessor company only a few months prior to the appointment of the Receiver; and where it further appears that the Receiver had used for betterments on the railroad property a portion of the income greatly in excess of the claims of the creditors who supplied such coal; *Held*, that the entire claim for such coal is a preferential debt, to be charged in the first instance upon the income, and secondarily upon the corpus of the railroad property of the lessor Company.

In support of the foregoing proposition, we submit the following argument and authorities :

The Richmond and Danville Railroad Company (hereafter called the Danville), being in possession of the franchises and properties of the Central, whether legally or illegally, had the right to bind the Central for supplies necessary to its operation.

(a) It is settled law that the lease of one railroad to another does not affect any of the obligations which the lessor company owes to the public; and one of its obligations is to continue the exercise of its franchises. In performing this obligation, it is

absolutely necessary that supplies should be furnished for the operation of the railroad, and the lessee company has the right to bind the lessor by contracts for the purchase of supplies where the lessor has transferred to the lessee the duty of exercising its franchises and operating the railroad as a carrier.

The only doubtful point that could arise with respect to the liabilities of leased railroads is whether or not the lessor company would be liable to persons who might be injured by negligence in its operation and whose right to recover for such negligence depended on no contract. It is settled law that the lessor is liable in such cases.

Singleton vs. the Southwestern Railroad, 70 Ga., 470.
Redfield Law of Railway, 616.

It follows, *a fortiori*, that if the right of recovery exists independent of the contract, it certainly exists where, in addition to the general public obligation, the right of recovery is given by contract binding the lessor through the agency of the lessee. To reason otherwise would seem to violate all logic. If the lessee is such an agent of the lessor that the lessor is liable for torts committed by the employees of the lessee, how much more will that agency make the lessor liable for contracts made in the name of the lessor for supplies necessary to perform its charter obligations?

(b) If the lease or the possession of the Central by the Danville was unlawful, nevertheless the Central would be bound by the contract made on its behalf by the officers of the Danville.

The Circuit Court for the Southern District of Georgia has so ruled in the case of the Macon Foundry and Machine Works against the defendants in this case, and we quote the ruling in part as follows:

"The Central Railroad & Banking Company deliberately through the action of its Board of Directors, transferred its entire property to the Georgia Pacific Railway Company, an insolvent corporation, in absolute violation of the law, and instantly, without a syllable of writing, turned over the entire property, not to the Georgia Pacific, but to the Richmond & Danville Railroad Company, which then operated it, collected all of its revenue and diverted the income in that way from the proper channel, and therefore held this property in contemplation of law as a trespasser. Now, the Central Railroad did that.

"The State had the right to expect, as I have said, that it would keep its property going as a great system of transportation, as was originally designed. The parties who took the property found it necessary, of course, to carry on the business of railroad transportation. In order to do that, they found it necessary to keep up the material equipment of the road. It was the duty of the defendant company to carry on the business; and if it selected, lawfully or otherwise, an agent to carry on the business for it, it is none the less responsible for the debt thus created, and it cannot primarily shift the obligation on the Richmond & Danville Railroad Company. The State had the right to expect when it chartered the Cen-

tral Railroad, that it would perform its duties to the public, and one of these duties was the payment of debts due and contracted for the purpose of carrying on its business as a transportation company."

(This case has not been reported, but the foregoing extract is copied from the opinion, of file in the office of the Clerk of the Court.)

It is not necessary to cite authority on the proposition that a railroad company is bound to maintain its operation. We refer, however, to the case of *Gates against the Boston and New York Air Line Company*, 24 Am. and Eng. Ry. Cases, 147, in which the Court says:

"Upon principle it would seem plain that the railroad property once devoted and assigned to public use, must remain pledged to that use; so as to carry to full completion the purpose of its creation, and that this public right existing by reason of the public exigency, demanded by the occasion and created by the exercise of the powers of the State, is superior to the property rights of coporations, stockholders and bondholders. To this effect also is the weight of authority."

Being under this obligation, the Central surrendered its property and franchises to the Danville, who took it under color of a lease from the Central Railroad to the Georgia Pacific. Under this state of facts we think the true rule of law is embodied in the following proposition:

The rule in *Fosdick vs. Schall* applies, although the creditor furnishing the supplies necessary to the operation of a railroad, furnished them in pursuance of a contract made with the officer of another corporation to which the railroad company had illegally surrendered its franchises and property by which corporation it was being operated. The Railroad Company, its stockholders and bondholders, who by the act of the majority and the acquiescence of the minority, placed in possession of the railroad, a lessee, in violation of law, will not be heard to defeat the equity of a supply creditor who furnished supplies necessary for the operation and actually used in the operation of the Railroad Company, to such pretended lessee upon the faith of the earning capacity of the railroad in pursuance of a contract made with such pretended lessee. In such case the lessee, even though illegally in possession and control of the railroad, is so far the agent of the Railroad Company as to bind it by contracts for supplies necessary for its operation; and especially where (as the Court finds to be the fact here) the contract was made in the name of the leased Company.

If this contract is to be repudiated, loss must fall upon the party who parted with a valuable consideration on the faith of that contract, while on the other hand, if the contract is enforced, a liability will be asserted as against the corporation and against its stockholders and bondholders.

If loss must fall upon one or the other of these two parties, it must in equity fall upon those who held out to the public the illegal agent; who put him in a position where he could say that he was authorized to bind the Railroad Company; who could induce parties to contract with him upon the faith of the earning capacity of the road.

Otherwise, if the Central Railroad Company and its stockholders and bondholders were allowed to repudiate this contract, they would be allowed to take advantage of their own wrong and of their own illegal action. If any other rule is adopted than the one now contended for, the result would be that the Central Railroad would be allowed to plead its own wrong when sued by a party who furnished supplies to enable it to carry out its charter obligations.

The authority of an illegal lessee as the agent of the lessor has been expressly upheld in the case of *Ottawa, Oswego & Fox River Valley Railroad Company vs. Black*, 97 *Illinois*, 262, in which the head-note is as follows, the head-note being the same as the language of the decision, on page 267:

"If a Railroad Company, without any authority to do so, leases its road to another company, the lessee will only be regarded as the servant of the company owning the road, and such company will not be by the act of leasing discharged from its contracts or released from any of its liabilities." To the same effect is the case of *Hays* against the same railroad, 61 *Illinois*, 123.

II.

The foregoing considerations acquire force when considered in connection with the diversion of the Central's income made by the Danville to the payment of the interest on the Central's bonds.

INCOME DIVERTED TO INTEREST AND IMPROVEMENTS.

The income of the Central was diverted to the payment of interest on bonds of the Central prior to the Receivership and during the time that the coal was being delivered; and after the Receivership a larger amount than the Intervenor's debts was used in making improvements upon the Central lines.

To this effect is the agreed statement of facts. (Record, page 15, clauses 14 and 15).

In the case of *Burnham vs. Bowen*, 111 *U. S.*, 776, the Court held even in a case where there had been no diversion by the company or by the Receiver of the current earnings for the payment of interest on bonds, a debt incurred over eleven months before the appointment of the Receiver, for coal used in the com-

pany's locomotives, should be paid out of the income of the Receiver upon the ground that it was such a debt as it would have been the company's duty to pay out of the net earnings if Receiver had not been appointed.

The equity declared in the case of Fosdick vs. Schall cannot be destroyed by a lease. It exists either against the Central or the Danville. Does it exist against the Danville? If so, on what grounds? The railroad operated by the use of the coal was the Central. The bonds on which the interest was paid by the Danville were the Central's. The Receiver who took the unconsumed coal on the lines was the Central's. With what color of equity, could these creditors have asserted that theirs was a preferential debt against the income and property of the Danville?

If, therefore, these intervenors should resort, as the counsel for the Central insisted in the Court below they should resort, to the Court which appointed the Receivers of the Danville, and ask that these coal debts be paid out of the property or earnings of the Danville under the rule in *Fosdick vs. Schall*, they would be met by the statement that the earnings of the Central which might otherwise have been applied by the Danville to the payment of these coal debts, had been applied to the payment of interest on the bonds of the Central, and that therefore that the proper forum in which to have recovery for these debts is that in which the Receivers of the Central were appointed. It seems to us that this reply would be conclusive.

Even if there had been no diversion of income for the payment of interest on bonds; it would be enough that the income had been diverted for the payment of improvements on the railroad property.

Persons who furnish labor, supplies and materials to a railroad, in order to keep it a going concern, are entitled to payment out of earnings thereof before the payment of any interest on the mortgage bonds; and if, in a suit to foreclose, it appears that money due upon claims of this nature has been paid out as interest on the bonds, or *permanent improvements*, whereby the bondholders have been benefited, the Court will order an amount equal to the sum so diverted to be paid upon such claims out of any earnings in the hands of the Receiver, or, failing these, out of the proceeds of the sale.

Finance Co. of Pennsylvania vs. Charleston, C. & C. R. R. Co., 48 Fed. Rep., 188.

The case under review was reported February 25th, 1895. It has been cited with implied approval. *Northern Pacific R. R. Co. vs. Lamont*, 69 Fed. Rep., 25. It has not been criticized or questioned.

III.

CASES CITED BY PETITIONER REVIEWED.

A comparison of the brief filed in the Circuit Court of Appeals by the appellee, and the same party (petitioner) here shows that every case now relied on was brought to the attention of that Court, (except one, 139 U. S., 24, which has no application :) and every contention now relied on was made, except the one already shown to be unauthorized by the evidence.

1. The cases of *Quincy Company vs. Humphreys* 145 U. S., 82, and *U. S. Trust Company vs. Wabash Ry.* 150 U. S., 287, involve only the question of the adoption of an existing lease by reason of the retention of possession of the leased railroad by a Receiver. They have no bearing on this case. If they have any bearing, it is adverse to the petitioner.

(a) The Court recognized the separate divisions of the Wabash system and directed the accounts so kept as to throw upon each division its respective liabilities, and only to permit payment upon its bonds when income exceeded expenses.

If in that case a supply creditor had asserted an equity against a single division for supplies furnished to and used by it exclusively, it would have been in accord with the entire theory of the Court's administration to have decreed that payment thereof be made by that division.

(b) The Court ordered the entire amount of preferential debts existing at the time of the receivership paid in preference to the mortgage.

(c) "The immense debt for supplies and other preferential claims here precludes the inference that there was any such diversion of earnings applicable to the payment of rentals." 145 U. S., 103

Appeals

Here the Circuit Court finds as a fact that diversion was made of earnings applicable to the payment of these supply debts.

2. The case of *Transportation Co. vs. Pullman Co.*, 139 U. S., 24, does not sustain the point on which it is cited and is wholly without application. The true rule is laid down in *Ottawa Co. vs. Black*, 97 Ill., 262, *supra*.

3. *Clyde against the Richmond & Danville Railroad Company*, 56 Fed. Rep., p. 540. On examining this case it will be seen to have no application. The *ratio decidendi* of that case is embraced in the following statements:

1st. In that case the intervenor had sued the Richmond & Danville Company *alone*; and had elected that company as her debtor and had merged her claim in a judgment against that company. (See page of Decision, 542.) The case here is wholly different.

2d. No question could be made in that case as to the obligation of the Railroad Company to which the supplies were furnished, for the reason that that railroad was not a party to the case before the Court (which is not true here, because the Central, which is the railroad for which the supplies were furnished, is a party to this case;) and also because in the Clyde case the mortgagees were not parties to the suit. That is not true here, because the mortgagees are parties and have filed their bill in this case as dependent upon the original Rowena M. Clarke bill, and in their dependent bill asked the Court to continue the same Receivership, which was done and which case has been consolidated by order of the Court with the other cases in which the interventions were filed; and their counsel unite in the agreed statement of facts on which the case is heard. (Record, p. 19.)

IV.

THE DECISION RIGHT UPON OTHER GROUNDS.

The judgment of the Court of Appeals may be sustained upon other grounds than those on which it is rested. If so, this petition should be denied.

1. The decision is right because it was clearly shown that *the contract for this coal was made specifically and exclusively with the Central*.

See statement of the evidence in the brief filed for intervenors in the Circuit Court of Appeals, page 3 to 6, and discussion, page 12. Copies of that brief are filed herewith.

2. The decision was right upon the further ground that *it was required by the statute of Georgia*. The Act of 1876, page 122, embodied in the Code of Georgia, 278 (a), is as follows:

" *An Act to define the duties and fix the liability of Receivers appointed for Railroad Companies, in certain cases, and to create liens in favor of certain creditors, and provide for the enforcement of such liens, and for other purposes.*

Duties of
Receivers of
Railroads.

" SECTION 1. *Be it further enacted, etc.,* That in all cases where the business of any corporation operating a railroad either wholly or partially in this State, shall by an order or decree of any court, be placed in the hands of a receiver for the benefit of the creditors or stockholders of said corporation, it shall be the duty of said receiver to apply the income of said railroad to the payment of the incidental expenses necessary to the carrying on said business, which shall include the wages of employees, wood, cross-ties and other material furnished, and which may be necessary for conducting said business and keeping the property in repair, and the damages which may arise from the loss or injury to goods, wares and merchandise received by said road for transportation, and for injuries to persons and property caused by the running of the cars on said road, and for which said road is now liable, as common carriers, by the laws of this State, and a lien is hereby created on the gross income of said road, while in the hands of such receiver, in favor of such creditors or claimants, superior to all other liens under the laws of this State.

Lien in favor
of creditors.

How paid.

" SEC. 2. *Be it further enacted,* That if said receiver should be removed, or a vacancy occur in said office, and a successor be appointed, it shall be his duty to pay the liens herein provided for, according to their date, out of any funds in his hands as such receiver, whether such liability accrued before or after his appointment."

It has already been stated that the judge of the District Court (sitting as Circuit Judge,) for the Southern District of Georgia, has construed this statute to apply to debts existing at the time of the Receivership "for expenses necessary to carrying on the business," etc.

In the Circuit Court of Appeals it was argued by the appellee that this Act must be construed as if intended to alter the rule laid down in *Henderson vs. Walker*, 55 Ga., 481, as follows:

"Receivers of a railroad holding possession for a Court of Chancery and operating the road under the orders of that Court, are not subject to suit in their official capacity, for a personal injury to one of their employees, resulting from the negligence of others of their employees in the same service."

And it was claimed that since this case was reaffirmed in *Thurman vs. Railroad*, 55 Ga., 376, in January, 1876, just one month prior to the act above quoted, that statute should be construed as intended to remedy the "evil" in that decision and others analagous to it; and that it was limited to liabilities arising during the Receivership.

This argument appeared to have some force; and it may be that for that reason the Circuit Court of Appeals failed to rest its decision upon this local law, as well as the equity in *Fosdick vs. Schall*; but the whole force of the argument against the application of the statute has been, since the decision in the Circuit Court of Appeals, overcome by a later decision of the Supreme Court of Georgia holding that the Act of 1876 did not affect the cases of *Henderson vs. Walker* and *Thurman vs. Railroad*.

The decision rendered August 9th, 1895, not yet reported, is as follows:

Patterson vs. The Central Railroad & Banking Company et al.

1. The above stated cases are controlled by the decisions of this Court in the cases of *Henderson vs. Walker et al.*, *Receivers*, 55 Ga. 481, and *Thurman vs. Cherokee Railroad Company*, 56 Ga. 376, holding that when a railroad company is in the hands of, and being operated by a Receiver, neither the Company nor the Receiver is subject to suit by an employee for personal injuries occasioned by the negligence of an employee.

2. As the rule announced in the above stated case has stood as good law for about twenty years, and the General Assembly has passed no act changing the same and the majority of this Court are of the opinion that they were correctly decided in the first instance, they are upon a review of the same hereby confirmed.

Atkinson, J., being bound by the rulings in the cases cited, concurs in the judgments rendered, but dissents from the majority opinion in declining to overrule those cases.

3. The decision was right upon the further ground that if the Central was not bound by the contract, the intervenors were entitled to recover from the Receiver for the coal in the bins, which he kept and used, the market price of the coal at the places of delivery.

This was as much as the value of all the coal at the contract price.

See discussion in Brief in Circuit Court of Appeals, pages 29-32, inclusive.

THE CASE NOT OF GENERAL IMPORTANCE.

This Court has laid down the rule with reference to the petitions of character, as follows :

"In the same spirit, the authority conferred on this Court by the very provision on which the petitioners mainly rely, by which it is enacted that 'in any such case as is hereinbefore made final in the Circuit Court of Appeals, it shall be competent for the Supreme Court to require, by certiorari or otherwise, any such case to be certified to the Supreme Court for its review and determination, with the same power and authority in the case as if it had been carried by appeal or writ of error to the Supreme Court,' has been held to be a branch of its jurisdiction which should be exercised sparingly and with great caution, and only in cases of peculiar gravity and general importance, or in order to secure uniformity of decision. *Lau Ow Bew's Case*, 140 U. S., 583 and 144 U. S., 47; *In re Woods* 143 U. S., 202. Accordingly, while there have been many applications to this Court for writs of certiorari to the Circuit Court of Appeals under this provision, two only have been granted: the one in *Lau Ow Bew's case*, above cited, which involve a grave question of public international law, affecting the relations between the United States and a foreign country; the other in *Fabre, Petitioner*, No. 1237 of the present term, an admiralty case, which presented an important question as to the rules of navigation, and in which the decree of the Circuit Court of Appeals for the Second Circuit reversed a decree of the district Judge, and was dissented from by one of the three Circuit Judges; and in each of those cases the Circuit Court of appeals had declined to certify the question to this Court."

Amer. Const. Co. vs. Jacksonville Railway, 148 U. S., Rep. 372, page of decision 383-4.

This case cannot be brought within this rule.

1. It is a case of peculiar facts. Ordinarily, a mine owner supplying coal to a railroad system would give credit to the company operating the system; the coal would be distributed promiscuously among the branches of the system; no proof would exist as to what portion was used on a particular line. But here, for very special reasons, the mine owner contracted specifically with and for a particular line and the proof is absolute as

to the use of the coal by that line. (See discussion in brief in Circuit Court of Appeals, p. 3-5, 12-13; and the agreement of counsel, Record, p. 85.)

2. The "forced reorganization of railroad properties now taking place throughout the country" is a belated argument. It is judicially known to the Court, as a part of the public history of the country, that these reorganizations have in the main already taken place; and the amount of mileage under control of Railroad Receiverships has already been very greatly reduced. For instance, in Georgia a few years ago, every railroad but one was in the hands of a Receiver; now there is but one in Receiver's hands.

Walter B. Hill.
Sole for Respondent

R. D. D. D. D.

JAN 13 1896

App. to Cir. of S. C. for App.

Filed Jan. 13, 1896.

**The Virginia & Alabama Coal
Company, et. al.,**

(INTERVENORS,

vs.

**The Central Railroad & Banking
Company of Georgia, et. al.**

Interventions in the case of
ROWENA M. CLARK, et.
al., against the Central
Railroad and Banking
Company of Georgia, et.
al., and other cases con-
solidated therewith.

In the Circuit Court of the
United States for the
Western Division of the
Southern District of
Georgia.

Number 319. November Term, 1894.

IN FIFTH CIRCUIT COURT OF APPEALS.

**BRIEF OF HILL, HARRIS & BIRCH FOR APPEL-
LANTS [INTERVENORS.]**

News Printing Co., Mason.

Filed FEB 6 1895

J. M. McKee
CLERK

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Number 319. November Term, 1894.

BRIEF OF HILL, HARRIS & BIRCH FOR APPEL-
LANTS [INTERVENORS.]

This is a suit for coal furnished by the intervenors, the Virginia & Alabama Coal Company, hereafter called the Virginia Company, and the Sloss Iron and Steel Company, hereafter called the Sloss Company, for the operation of the Central Railroad & Banking Company of Georgia, hereafter called the Central, while operated by the Richmond & Danville Railroad Company, hereafter called the Danville. All the coal was furnished within less than six months prior to the appointment of Receivers for the Central. The Central was leased to the Georgia Pacific; the Georgia Pacific was leased to the Danville; and the Danville under color of this lease was operating the Central. But for the lease, the liability of the Central to supply creditors under the rule in *Fosdick vs. Schall* would be undisputed; the main question in the case is with respect to the application of the rule in view of the lease.

STATEMENT OF THE CASE.

On June 1st, 1891, the Central was leased to the Georgia Pacific Railroad Company; (Lease, pp. 20--45), and on the same day the Danville (to which the Georgia Pacific was already leased) went into the possession of the Central and operated the same till March 4th, 1892, at which date the Receivers of the Central were appointed (pp. 1--2).

The lease transferred not only the main lines of the Central, but various lines which it controlled by lease and by stock ownership. It further provided that the lessees should take possession of the leased property as a running road, taking such fuel and other supplies as it then had in possession, and on the other hand obligating the lessees to pay the current debts of the lessor Company for supplies, etc. (Lease, p. 37.)

The lease also provided that the lessee should pay the interest on the bonds and debentures of the Central and of the lines upon which the Central had guaranteed interest on bonds, and also dividends on the stock of the Central. (Lease, pp. 34-35, clauses 2, 3 and 4.)

In connection with this clause in the lease, it is appropriate to notice at this point the agreed statement of facts (Record, p. 15, Clause 14) that the semi-annual interest on the Five Million Dollars of mortgage bonds of the Central was paid in January, 1892, (the order appointing the Receiver being dated March 4th, 1892.) It is also an agreed fact that during the Receivership the Central expended for betterments on its Railroad lines from the income of the roads during the Receivership, a sum much larger than the entire claim of the Intervenor. [p. 15.]

To set aside this lease, Mrs. Rowena M. Clarke, a stockholder, brought her bill against the Central under which a Receiver was appointed March 4th, 1892. The Danville and Georgia Pacific disclaimed any rights under the lease, and no issue was raised in relation thereto such as to require decision as to the validity or

invalidity of the lease ; and such question has not been determined. Shortly afterwards the Central filed a dependent bill, under which the same Receivership was continued, and under which it was also extended to the Port Royal & Augusta Railroad and the Port Royal & Western Carolina Railroad. (The last two companies were afterwards discharged from the Receivership, to-wit: On June 16th, 1893, p. 14.) The Farmers' Loan and Trust Company, the Trustee for the mortgage bondholders of the Central, afterwards filed its dependent bill in said cases under which the same Receivership was continued. All these cases were afterwards consolidated.

On July 13th, 1891, a contract was made with the Virginia Company for the purchase of a year's supply of coal to operate the Central lines. The contract is as follows : (pp. 48--49.)

RICHMOND & DANVILLE RAILROAD CO.,

OFFICE GENERAL PURCHASING AGENT,

ATLANTA, GA.

JOSEPH P. MINITREE,

General Purchasing Agent,

THE VIRGINIA & ALABAMA COAL COMPANY.

Mr. J. R. Ryan, V. P. and G. M., Birmingham, Ala.

Dear Sir—We beg to accept your verbal offer of to-day to furnish the C. R. R. & B. Co. of Ga. with say 275,000 tons of best quality engine steam coal for the next twelve months, commencing July 1st, 1891, and ending July 1st, 1892, at 90 cts. per ton of 2,000 lbs., to be delivered on cars at mines and to be shipped at times and in quantities to suit. Settlements for the coal delivered in any one month to be made on or about the 1st of the second succeeding month ; and the C. R. R. & B. Co. of Ga. reserves the right to increase or decrease the monthly deliveries upon reasonable notice at any time. The Division Superintendents of the Divisions

for which the coal will be required will communicate with you as to the monthly deliveries, and all bills for coal furnished under this contract to be sent direct to the Division Superintendents. Kindly confirm this at once and oblige.

Yours truly,

(Signed.)

JOSEPH P. MINITREE,

July 13th, 1891.

General Purchasing Agent.

The Master found under the evidence that this was a contract with the Central. (p. 86, par. 6) The finding was based on the contract itself, and on the testimony of J. R. Ryan, Vice-President and General Manager of the Virginia Company, who testified positively that he made the contract with the Central, and that he would not have contracted except with the Central. He stated that Mr. W. H. Green, the General Manager of the Danville (after negotiations as to the terms of the contract were completed), "wrote it out in the name of the Richmond & Danville Railroad, and I told him I was compelled to reject it. He told Mr. Minitree and said, "you can contract with the Central," and that is all I know about it." (p. 128.)

Ryan further testified that "he (Minitree) told me he was Purchasing Agent of the Central Railroad also, or I would not have signed it, because I would not have accepted it as being made by the Richmond & Danville," (p. 128.)

"Nobody told me that they would take the contract in the name of the Central; I told them that I would not take it in any other way. I said: "If you cannot make it in the name of the Central Railroad of Georgia, I cannot contract with you." I was very explicit, because I expected to have trouble with the coal mines." (p. 134.)

The reason why the witness was so positive and explicit on this point was this: Various Southern Coal

Companies had agreed not to underbid each other in the sale of coal to various corporations. The agreement was such as to give to each coal company the sale of the coal in its own natural territory (Ryan's testimony, p. 133), (Seddon's testimony, p. 312). Under this agreement the Virginia Company was bound not to sell to the Danville; but was free to sell to the Central (Ryan's testimony, page 133). Ryan testifies that he was under a "moral obligation" not to sell to the Danville, which obligation he would not violate, (pp. 134-5); that he knew in a general way of the lease, but did not know its nature; did not understand that selling to the Central was the same thing as selling to the Danville; was honest and sincere in making the contract with the Central, (p. 135.)

Afterwards Mr. Seddon, President of the Sloss Company, complained that this contract had been made. He testified: "I went to Mr. Ryan and told him that I did not think I had been properly treated in that matter, that he had made a contract with the Richmond & Danville when he said that he would not. He said he hadn't made it, 'I refused positively to do it,' and says 'I made the contract with the Central Railroad Company'" and he said further that Captain Green and Capt. Minitree said they had authority to contract for that company." (p. 313).

In pursuance of this contract the Virginia Company between September 16th, 1891, and March 4th, 1892, shipped to the Division Superintendents (Curran at Macon, Dill at Savannah, and Epperson at Augusta,) coal to the amount (per contract price of 90 cents per ton) of \$26,607.44. The Sloss Company, under the same contract by the consent of both parties, supplied coal to the amount of \$14,359.38. All bills were made out in the name of the Central (Ryan's testimony, p. 140).

The price at which the Central got the coal was less than under the "strongest competition" ever existing in the South (Ryan's testimony, page 141.) The Central made 20 cents per ton by the contract. (Seddon's testimony, p. 313.)

E. P. Alexander, a director of the Central Railroad, testified that the lease of the Central and the taking possession thereof by the Danville, was a matter of common notoriety; that after the lease the Central carried on no business except the banking business, and had no other employees except such as "were necessary to maintaining the organization of the Railroad Company which had parted by lease with its railroad lines and shops, or the maintaining of the same;" that Joseph P. Minitree had no connection with the Central prior to the lease, but that when the lease was made his jurisdiction as purchasing agent was extended over the Railroad lines of the Central by order of W. H. Green, General Manager of the Danville; page 244-5.

The Interventions (Virginia Company's p. 45, Sloss Company's, p. 248,) sue upon the contract, the former Company suing (by amendment allowed) for the use of the latter. The Central, the Receivers thereof and the Danville (which had not then been placed in hands of Receivers) were made defendants. The defendants demurred. (Demurrer by Central, pp. 65, 270, 272, by Danville, p. 67.) The questions passed by the demurrers were reserved for the final hearing, p. 69.

None of the defendants filed answers.

By amendments (pages 70 and 274) intervenors alleged that while much of the coal was used in the operation of the Central prior to the receivership, that a large part of the coal shipped was upon the bins of the Central at the time of the appointment of the Receiver, March 4th, 1892, and that some of the coal arrived after March 4th, and likewise went into the possession of the Receivers.

No answers were made to these amendments.

The Intervenor petitioned for the production of the books and documents (coal chute reports, etc.) which would show how much of the coal was on hand as above set forth. (p. 74.)

In lieu of producing this documentary evidence, an agreement was made by Counsel for all parties that the Intervenor should appoint one expert, the Danville another and the Central another, to investigate the matter and report. The Intervenor appointed C. H. Schoolar, the Danville W. B. Starke, and the Central was represented by the local agents in charge of each coal chute station when the investigation was made. (pp. 146 148, 154-6.)

The agreement was sanctioned by the Court. (p. 78.) The investigation occupied several weeks, was very "thorough and careful," (Schoolar's testimony, p. 156,) and the reports made were unanimous. No dispute was made by the agents of the Receiver as to the correctness of the data for the report or the basis on which it was made. (Schoolar's testimony, p. 156.)

After the reports were filed the Central only offered evidence tending to show an error in the amount on one bin. (p. 243.)

The Master's Report finds that coal of the Virginia Company, worth \$13,735.89, was used prior to the Receivership; that coal worth \$6,700.50 was on the bins at the time of the appointment of the Receiver; and that coal worth \$6,171.30 was received by the Receiver after his appointment; (Report, p. 87, par. 9;) and that of the coal of the Sloss Company, coal worth \$10,320.17 was used prior to the appointment of the Receiver; that coal worth \$3,818.00 was on the bins March 4th, 1892, and that coal worth \$776.00 arrived after the appointment of the Receivers. (Report, page 278.)

The prorata amount of the total coal of each Intervenor on the bins was arrived at as follows: The Virginia Coal Company being unable to supply the whole amount of coal under the contract, got three other companies, Sloss, Corona, and Little Warrior to supply certain portions of coal under its contract. No other company furnished coal to the Central within a year previous to the receivership. This was the finding of the Master (p. 88, par. 12). The only doubt thrown upon

this fact arose from the testimony of C. H. Schoolar, (page 159), that he saw on the books of the Central while examining its coal records, the name of the Tennessee Coal and Iron Company. This doubt was removed by the testimony of the General Manager of that Company, that it furnished no coal to the Central within a year, and that it had no claim to any of the coal on the bins (page 229). The coal of the four companies having been mingled in the bins, any separation was, of course, impossible; and they entered into an agreement *inter sese* that they would only claim as against the Receivers such part of the total coal on the bins as was in proportion to their respective debts (see agreement, page 228). This method of prorating was the only method possible. C. H. Schoolar testified, as an expert, that the method was fair and just to all parties. (p. 156.)

The Receivers deny that they could be bound by this division *inter sese*, and seek to defend against liability for any of the coal, on account, among other grounds, of the failure of proof respecting the amount of coal furnished by each Company, and on the ground that coal already paid for was mingled with that in the bins unpaid for. The evidence, however, was satisfactory to the Master, but the intervenors insist that if the proof was defective in respect to the proposed sub-division among the four companies of the coal on the bins, the lien of the coal companies for that coal as supply creditors, would still be paramount—the coal having been furnished immediately prior to the appointment of the Receivers, and constituting a preferential debt.

A question arises in the case as to the price of the coal at which the Receivers should account for the value of the coal used by them, to-wit: that received by them after their appointment, as well as that which was on the bins. The average market value of the coal of the Virginia Company used by the Receivers at the places of delivery was \$2.74 per ton, (Master's Report, p. 99) making the coal so used worth \$39,061.19, (Master's Report, p. 91). The average market value of the coal of the Sloss Company used by the Receivers

was \$2.50 per ton (Master's Report, p. 279) making the coal worth \$12,077.56.

On this branch of the case the Intervenor contended that the Receivers could not claim the benefit of the low contract price without adopting the contract. The Central insisted that the value of the coal over the contract price was due to its freight, and that the freight was earned by the Central lines.

The Master found that the contract sued on was the contract of the Central, and that the debt of the Intervenor constituted a preferential debt under the rule in the case of *Fosdick vs. Schall*, and gave judgment to the Intervenor for the full amount of their claims against all of the defendants, and that upon the payment of the claims by the Central that Company should be entitled to recover the amount thereof from the Danville. [Report in the Virginia Company's case, p. 80-95, Report on the Sloss Company's case, p. 274-283]. He reduced the amount by supplemental reports, [pp. 101, 284.] by deducting the value of certain coal used from the Central's bins at Augusta by the Port Royal & Augusta R. R., the Port Royal & Western Carolina R. R., and the Charlotte, Columbia & Augusta R. R.

All the defendants excepted to the Master's Report. [Exceptions of the Central, pp. 107, 287, Exceptions of Danville, pp. 103, 285]. The Intervenor excepted to the supplemental Report. [pp. 105, 299]. They insist that the railroads mentioned [except the C. C. & A.] were controlled by the Central through stock ownership, and were part of the Central system. These Corporations stated in their answers that the Central controlled them by a stock ownership, and that they were part of the Central system [p. 12-13]. They were discharged from the Receivership, June 16th, 1893. [p. 14.] Intervenor insist that the coal they used was used prior to the latter date.

The Court set aside the Master's Report and held the Central and the Receivers liable only to the extent of the coal which arrived after March 4th, 1892, and for

that, holding them liable at the contract price. [Opinion p. 351, Decree p. 357.]

The Central filed no cross appeal; and this branch of the case is disposed of, except that Intervenorins insist that, if the Receivers were not liable under the contract, as adjudged by the Court, then they must account for the coal they got, at its market value, and not the lower contract price.

SPECIFICATIONS OF ERROR.

The Court did not in the opinion or decree pass upon the exceptions to the Master's Report specifically. For this reason it is difficult to comply literally with Rule 24 of this Court and to state in these specifications the "exception to the report and the action of the Court upon it;" but the rule is complied with as far as it is possible to state the action of the Court upon the exceptions, as that action may be inferred from the general tenor of the opinion and the decree. Reference is made to the assignments of error in the Record [pp. 362-8], where the assignments of error are fully set forth.

1st. The Court erred in setting aside the Master's Report. Intervenorins insist that the same embodied the true law of the case and the correct findings of fact. Especially was it error to disregard the Master's finding upon questions of fact where they were amply sustained by the evidence.

2d. The Court erred in holding that the contract sued on was not a contract with the Central. Intervenorins insist that it was in terms an express contract with the Central, and that the oral testimony showed conclusively that it was a contract with the Central and the Central alone.

3d. If, however, the contract was a contract made the Danville, the Court erred in holding that, for that reason, it was not binding on the Central. The Court in the decision states that "in the opinion of the Court

the Master was mistaken when he concluded that the Central was liable for the price of all the coal delivered by the Intervenor under the contract." (page 354.) This, by inference, sustains the second exception of the Central in the Virginia case (page 109) and the first exception in the Sloss case. (Page 287.) Intervenor insist that if the lease was valid, the Danville had the right to contract on behalf of the Central for this coal, and if it was invalid, the Central would still be bound, because by the action of its stockholders and officers, it had put its franchises and property in the possession of the Danville to be operated, and would be bound by contracts which the officers of the Danville made for supplies to operate its lines.

4th. If the contract was not binding for the whole amount of the coal, the Court erred in holding that the Receivers of the Central were not liable for the coal which was on the bins at the time of the appointment of the Receivers.

5th. If the Receivers were only liable for the coal which they received in unloaded cars after their appointment (March 4th, 1892,) and if the Court was right in holding that there was no contract with the Central, then the Court erred in not holding the Receivers of the Central liable for the value of the coal so received by them at its market price at the places of delivery.

The Receivers could not repudiate the contract and at the same time adopt the contract for the purpose of getting the advantage of the low contract price on the coal which they received.

6th. The decree is not consistent. If the Receivers were liable for the coal which they received after their appointment in unloaded cars, they were equally liable for the coal which was on the bins at the date of the appointment, and of which they took possession and which they used in the operation of the Central lines. The Court found the Receivers liable for the former debt, but not the latter; and the Court gave to the Receivers the benefit of the low contract price, while at the same time refusing to enforce the contract.

BRIEF OF THE ARGUMENT.

The Contract Sued on is a Contract With the Central.

(a) The written contract expressly binds the Central. (page 48.) It provides that the Virginia Company is to "furnish coal to the Central Railroad and Banking Company of Georgia" for the succeeding twelve months, and that "the Central Railroad and Banking Company of Georgia reserves the right to increase or decrease the monthly deliveries." There is nothing upon the face of the contract to show any connection with the Danville, except the unimportant fact that the contract was written upon a letter-sheet having the name of the latter corporation at the top.

Contracts made with one corporation are not presumed to have been made with another.

Coggins vs. the Central Railroad Company, 62 Ga. 685.

(b) The testimony of J. R. Ryan and Thomas Seddon, quoted in the statement of the case (page of this brief) shows that the contract was explicitly with the Central and explicitly not with the Danville. The Master so finds under the evidence. The finding on disputed questions of fact should only be set aside for manifest error.

Medsker vs. Bonebrake, 108 U. S. 71.

Bridges vs. Sheldon, 7 Fed. Rep. 35.

The Court held that the making of the contract for the Central was by "a process of casuistry" (page 353) and that the "testimony of those witnesses who were parties to the contract shows indisputably that while the Central was designated as the purchasing party, the designation was fictitious." (page 354.)

No party to the contract testified save one; that was J. R. Ryan, who testified that he was free to sell coal to the Central, because his mine, being a small one, had

been left out of the combination, so far as the Central was concerned; (and if so, there was no reason whatever for any casuistry;) but that he was under a moral obligation not to sell to the Danville, and that he was honest and sincere in making the contract with the Central. See testimony quoted in statement of the case. (page of this brief.) Ryan was not impeached. It was not shown that he had any sinister interest in the case, and his evidence is certainly frank and has all the indications of coming from a reputable witness. It is not probable that a man of bad moral character would have been entrusted with the large financial interests which he represented. Nothing in the record impugns his veracity. The Court's finding, therefore, which in effect puts the brand of falsehood upon every word sworn to by Ryan, is not predicated on an evidence, nor, we submit, on any warrantable inference therefrom.

In his testimony, Ryan in speaking of the corporation described it by the name by which it is usually called in common speech, namely: "The Central." His entire examination (Record, page 128-142) and its connection with the contract in issue, shows that he was speaking of the corporation whose full legal name is the Central Railroad and Banking Company of Georgia, and which in the contract is described by all the initials of its full corporate name. Yet, strange to say, counsel for the Central in the Court below attempted to show that the Central was not bound, because they said Ryan simply spoke of "the Central" in his testimony, and did not speak of the "Central Railroad and Banking Company of Georgia." This is indeed "casuistry!"

This purely technical point, has not, however, for its support even the basis of fact. On page 134 Ryan's testimony is that he stated to the officers of the Danville "if you cannot make it (the contract) in the name of the Central of Georgia, I cannot contract with you."

(c) If it were true that Ryan's *motive* in making the contract with the Central was to evade the agreement that bound him not to sell to the Danville, that motive

would not affect the contract actually made. The Central cannot defend against liability for supplies actually used in operating its lines on the ground that the agreement or combination made the contract unlawful.

In fact, the result of the combination was highly beneficial to the Central in that it secured coal at a lower rate than it had ever done under free competition. It is true that under the combination the price of coal was advanced to the Richmond and Danville up to one dollar and twelve (\$1.12) per ton, but the Central got coal from the Virginia Company at 90 cents per ton. (Pages 141, 143.)

If the Contract was with the Danville, it Nevertheless Binds the Central.

The Court reached the conclusion that the contract was really with the Danville, and seems to have regarded this conclusion alone as a sufficient reason for exempting the Central from liability. We insist that this is a complete *non-sequitur*. We insist that the Danville being in possession of the franchises and properties of the Central, whether legally or illegally, had the right to bind the Central for supplies necessary to its operation.

(a) It is settled law that the lease of one railroad to another does not affect any of the obligations which the lessor company owes to the public; and one of its obligations is to continue the exercise of its franchises. In performing this obligation, it is absolutely necessary that supplies should be furnished for the operation of the railroad, and the lessee company has the right to bind the lessor by contracts for the purchase of supplies where the lessor has transferred to the lessee the duty of exercising its franchises and operating the railroad as a carrier.

That there is an absence of authority on the question of liability of the lessor for contracts of the lessee in which the lessor is bound *eo nomine*, (there being no authorities on either side of the question) may, and we

think, does suggest the inference that the proposition is so plain that no one has ever had the temerity to question it.

The only doubtful point that could arise with respect to the liabilities of leased railroads is whether or not the lessor company would be liable to persons who might be injured by negligence in its operation and whose right to recover for such negligence depended on no contract. It is settled law that the lessor is liable in such cases.

Singleton vs. the Southwestern Railroad, 70 Ga. 470.
Redfield Law of Railway, 616.

It follows, *a fortiori*, that if the right of recovery exists independent of contract, it certainly exists where, in addition to the general public obligation, the right of recovery is given by contract binding the lessor through the agency of the lessee. To reason otherwise would seem to violate all logic. If the lessee is such an agent of the lessor that the lessor is liable for torts committed by the employees of the lessee, how much more will that agency make the lessor liable for contracts made in the name of the lessor for supplies necessary to perform its charter obligations?

(b) If the lease or the possession of the Central by the Danville was unlawful, nevertheless the Central would be bound by the contract made on its behalf by the officers of the Danville.

The Court below has so ruled in the case of the Macon Foundry and Machine Works against the defendants in this case, and we quote the ruling in part as follows :

" The Central Railroad and Banking Company deliberately through the action of its Board of Directors, transferred its entire property to the Georgia Pacific Railway Company, an insolvent corporation, in absolute violation of the law, and instantly, without a syllable of writing, turned over the entire property, not to the Georgia Pacific, but to the Richmond and Danville Railroad Company, which then operated it, collected all of its revenue and diverted the income in that way from the proper channel, and therefore held this property in contemplation of law as a trespasser. Now, the Central Railroad did that.

" The State had the right to expect, as I have said, that it would keep

its property going as a great system of transportation, as was originally designed. The parties who took the property found it necessary, of course, to carry on the business of railroad transportation. In order to do that, they found it necessary to keep up the material equipment of the road. It was the duty of the defendant Company to carry on the business; and if it selected lawfully or otherwise, an agent, to carry on the business for it, it is none the less responsible for the debt thus created, and it cannot primarily shift the obligation on the Richmond and Danville Railroad Company. The State had the right to expect when it chartered the Central Railroad, that it would perform its duties to the public, and one of these duties was the payment of debts due and contracted for the purpose of carrying on its business as a transportation company."

(This case has not been reported, but we file a certified copy of the opinion herewith.)

The Court below, in the opinion in the present case, says that in the case quoted the debt was for the improvement on the property of the Central, and that there was "no express contract made with the Richmond and Danville as in this case;" but we respectfully submit that the rule laid down by the Court, if it be the law, as we think it is, also governs this case, namely: "It was the duty of the defendant (the Central) to carry on the business, and if it selected, lawfully or otherwise, an agent to carry on the business for it, it is none the less responsible for the debt thus created, and it cannot primarily shift the obligation on the Richmond and Danville Railroad Company." It is hardly necessary to cite authority on the proposition that a railroad company is bound to maintain its operation. We refer, however, to the case of *Gates against the Boston and New York Air Line Company*, 24 Am. and Eng. Ry. Cases 147, in which the Court says:

"Upon principle it would seem plain that the railroad property once devoted and assigned to public use, must remain pledged to that use; so as to carry to full completion the purpose of its creation, and that this public right existing by reason of the public exigency, demanded by the occasion and created by the exercise of the powers of the State, is superior to the property rights of corporations, stockholders and bondholders. To this effect also is the weight of authority."

Being under this obligation, the Central surrendered its property and franchises to the Danville, who took it under color of a lease from the Central Railroad to the

Georgia Pacific. Under this state of facts we think the true rule of law is embodied in the following proposition:

The rule in *Fosdick vs. Schall* applies, although the creditor furnishing the supplies necessary to the operation of a railroad, furnished them in pursuance of a contract made with the officer of another corporation to which the railroad company had illegally surrendered its franchises and property by which corporation it was being operated. The Railroad Company, its stockholders and bondholders, who by the act of the majority and the acquiescence of the minority, placed in possession of the railroad, a lessee, in violation of law, will not be heard to defeat the equity of a supply creditor who furnished supplies necessary for the operation and actually used in the operation of the Railroad Company, to such pretended lessee upon the faith of the earning capacity of the railroad in pursuance of a contract made with such pretended lessee. In such case the lessee, even though illegally in possession and control of the railroad, is so far the agent of the Railroad Company as to bind it by contracts for supplies necessary for its operation.

If this contract is to be repudiated, loss must fall upon the party who parted with a valuable consideration on the faith of that contract, while on the other hand, if the contract is enforced, a liability will be asserted as against the corporation and against its stockholders and bondholders.

If loss must fall upon one or the other of these two parties, it must in equity fall upon those who held out to the public the illegal agent; who put him in a position where he could say that he was authorized to bind the Railroad Company; who could induce parties to contract with him upon the faith of the earning capacity of the road.

Otherwise, if the Central Railroad Company and its stockholders and bondholders were allowed to repudiate this contract, they would be allowed to take advantage of their own wrong and of their own illegal action. If any other rule is adopted than the one now contended for,

the result would be that the Central Railroad would be allowed to plead its own wrong when sued by a party who furnished supplies to enable it to carry out its charter obligations.

The authority of an illegal lessee as the agent of the lessor has been expressly upheld in the case of *Ottawa, Oswego & Fox River Valley Railroad Company vs. Black*, 97 Illinois 262, in which the head note is as follows, the head note being the same as the language of the decision, on page 267:

"If a Railroad Company, without any authority to do so, leases its road to another company, the lessee will only be regarded as the servant of the company owning the road, and such company will not be by the act of leasing discharged from its contracts or released from any of its liabilities." To the same effect is the case of *Hays* against the same railroad. 61 Illinois 123.

In the opinion, the Court below states that "No officer of the Central, so far as the evidence discloses, was even consulted in reference" to this contract. The Court completely answers this portion of the opinion by the following sentence in another paragraph (page 333): "The Central had indeed practically abandoned its franchises under color of the lease to the Georgia Pacific, of which the Richmond and Danville had availed itself to operate the properties and receive the incomes of the Central." The testimony of E. P. Alexander (page 244) was that the Central "had no other employees except its President and Board of Directors and attorneys and such employees as were necessary for its banking business, and such only as were necessary to maintaining the organization of a Railroad Company which had parted by lease with its railroad lines and shops or the maintaining of the same." Under this state of facts it is not strange that "no officer of the Central was consulted" about this coal contract, for the contract related to that department of business which the Central had transferred bodily to the Danville.

Income Diverted to Interest and Improvements.

The income of the Central was diverted to the payment of interest on bonds of the Central prior to the

Receivership and during the time that the coal was being delivered; and after the Receivership a larger amount than the Intervenor's debts was used in making improvements upon the Central lines.

To this effect is the agreed statement of facts. (Record, page 15, clauses 14 and 15).

In the case of *Burham vs. Brown*, 111 U. S. 176, the Court held even in a case where there had been no diversion by the Company or by the Receiver of the current earnings for the payment of interest on bonds, a debt incurred over eleven months before the appointment of the Receiver, for coal used in the company's locomotives, should be paid out of the income of the Receiver upon the ground that it was such a debt as it would have been the company's duty to pay out of the net earnings if the Receiver had not been appointed.

It is important to note that the bonds upon which interest was paid, as set forth in the agreed statement of facts, were not bonds of the Danville, but were the bonds of the Central and, so far as this record shows, the only bonds upon the Central system. If, therefore, these Intervenor's should resort, as the Counsel for the Central insisted in the Court below they should resort, to the Court which appointed the Receivers of the Danville, and ask that these coal debts be paid out of the property or earnings of the Danville under the rule in *Fosdick vs. Schall*, they would be met by the statement that the earnings of the Central which might otherwise have been applied to the payment of these coal debts, had been applied to the payment of interest on the bonds of the Central, and that therefore that the proper forum in which to have recovery for these debts is that in which the Receivers of the Central were appointed. It seems to us that this reply would be conclusive.

Even if there had been no diversion of income for the payment of interest on bonds; it would be enough that the income had been diverted for the payment of improvements on the railroad property.

Persons who furnish labor, supplies and materials to a railroad, in order to keep it a going concern, are entitled to payment out of the earnings thereof before the payment of any interest on the mortgage bonds; and if, in a suit to foreclose, it appears that money due upon claims of this nature has been paid out as interest on the bonds, or *permanent improvements*, whereby the bondholders have been benefited, the Court will order an amount equal to the sum so diverted to be paid upon such claims out of any earnings in the hands of the Receiver, or, failing these, out of the proceeds of the sale.

Finance Co. of Pennsylvania vs. Charleston, C. & C. R. R. Co., 48
Fed. Rep. 188.

In the Court below, reliance was placed by the counsel for the Central on the case of Clyde against the Richmond and Danville Railroad Company, 56 Fed. Rep. p. 540. On examining this case it will be seen to have no application. The *ratio decidendi* of that case is embraced in the following statements:

1st. In that case the Intervenor had sued the Richmond and Danville Company *alone*, and had elected that company as her debtor and had merged her claim in a judgment against that company. (See page Decision 542).

2d. No question could be made in that case as to the obligation of the Railroad Company to which the supplies were furnished, for the reason that that railroad was not a party to the case before the Court (which is not true here, because the Central, which is the railroad for which the supplies were furnished, is a party to this case;) and also because in the Clyde case the mortgagees were not parties to the suit. That is not true here, because the mortgagees are parties and have filed their bill in this case as dependent upon the original Rowena M. Clarke bill, and in their dependent bill asked the Court to continue the same Receivership, which was done and which case has been consolidated by order of the Court with the other cases in which the Interventions were filed.

The case of U. S. Trust Co. vs. Wabash, etc., Co. 150 U. S. 287, relied on by counsel for the Central, contains nothing to show that the Supreme Court consid-

ered the question of the liability of the lessor company for preferential debts.

THE LOCAL LAW OF GEORGIA.

The foregoing argument rests the liability of the defendants upon the rule in *Fosdick vs. Schall*, which rule is a part of the general equity jurisprudence administered in the Federal Courts. Although it is true that in the case of the *Central Trust Company vs. Thurman*, decided by the Supreme Court of Georgia, October 4th, 1894, (not yet reported) it was held that that lien could not be recognized in a distribution of funds under the *Trader's Act*, yet the Federal Courts will not for that reason refuse to enforce a principle of general equity jurisprudence which is independent of local law. Besides, in the case just referred to, the Supreme Court of Georgia did not say that they would not recognize as a part of the equity jurisprudence of Georgia the rule of *Fosdick vs. Schall*, (that question is left open) but the case before them was a case which arose under the law of Georgia known as the *Trader's Act*, in pursuance of which three unsecured creditors may, before judgment, obtain an order placing the property of an insolvent debtor in the hands of a Receiver, and the decision related solely to distribution in Receiverships under that Act. The *Central Receivership* was not under this Statute.

Although we do not consider it as important to the case, because we believe that the equity for which we contend is predicated upon the rule in *Fosdick* against *Schall*, yet we cite as evidence of the law of Georgia upon this subject the Act of 1876, embodied in the Code of Georgia, Section 278 (a). The Act is in two sections—all but the last sentence being embraced in Section 1. The Act is quoted as codified :

"In all cases where the business of any corporation operating a railroad, either wholly or partially, in this State, shall, by an order or decree of any court, be placed in the hands of a Receiver for the benefit of the creditors or stockholders of said corporation ; it shall be the duty of said Receiver to apply

the income of said railroad to the payment of the incidental expenses necessary to the carrying on of said business, which shall include the wages of employees, wood, cross-ties and other material furnished, and which may be necessary for conducting said business, and keeping the property in repair, and the damage which may arise from the loss or injury to goods, wares and merchandise received by said road for transportation, and for injuries to persons and property, caused by the running of the cars on said road, and for which said road is now liable as a common carrier by the laws of this State; and a lien is hereby created on the gross income of said road, while in the hands of such Receiver, in favor of such creditors or claimants, superior to all other liens under the laws of this State. If said Receiver should be removed, or a vacancy occur in said office, and a successor be appointed, it shall be his duty to pay the liens herein provided for, according to their date, out of any funds in his hands as such Receiver whether such liability accrued before or after his appointment." Code 278.

The requirement of this Statute that the Receiver shall apply the income of the railroad to the payment of the incidental expenses necessary to carry on said business, clearly includes the current liabilities of the railroad for supplies necessary for the conduct of the business. It is true that this Statute made new law in Georgia in so far as it directed the Receiver to apply the income to the payment for injuries to persons and property, and was designed to change the rule which had been laid down by the Supreme Court of Georgia in *Henderson vs. Walker*, 55 Ga. 481, to the effect that a railroad was not liable for a personal injury to an employee resulting from the negligence of a fellow servant. By the Statute law of Georgia, railroads are liable in such cases (the common law rule having been abolished) and so far as the Statute related to this subject matter, its object was to put Receivers of railroads upon the same footing as railroads themselves; but in other respects the object of the Statute was to declare what was already recognized as the general doctrine in Courts of Equity that Receivers should apply the income of the railroad to the payment of expenses necessary to the carrying on of said business, and this not only included expenses from the date of his appointment (for which he was liable, as a matter of course, and for which it was wholly perfunctory to say by Statute that he was liable), but applied to the current supply debts incurred within a reasonable time prior to his appointment.

In one other respect besides that mentioned above, the foregoing Statute is an extension of the equity principle in *Fosdick vs. Schall*, to-wit: It places the rights of creditors upon the same footing whether the Receivership is for the benefit of the creditors or *stockholders* of the corporation. Under this Statute, therefore, Intervenor was entitled to the judgment they sought, independent of the Trustee of the bondholders becoming a party to the litigation and independent of the diversion of the income. It is unnecessary, however, to insist upon this point, because both of the conditions referred to are present in this case.

Although the decisions are not reported, yet, inasmuch as they are known to opposing Counsel in this case, it is permissible to state that the Court below has construed this Georgia Statute to refer to the payment of current debts for supplies, &c., contracted prior to the appointment of the Receiver; and in pursuance of that construction the Court has given judgment against the Central and its Receivers for wood and other materials furnished to the Richmond and Danville while it was operating the Central, and which the Danville used in the operation of the Central. It is also proper to state that the Court below distinguished his ruling in such cases from the decision which is the subject of the present appeal; though we are wholly unable to see the distinction.

The Central Having Received the Benefit of all the Coal Shipped by the Intervenor Under the Contract is Liable for the Whole Amount.

The Master found in his original report that all of the coal shipped by the Intervenor was actually used for the benefit of the Central; but modified his finding in a supplemental report in which he reduced his original finding by deducting therefrom certain coal which was taken from the bins of the Central at Augusta and

used by the following three railroads: The Port Royal and Augusta, the Port Royal and Western Carolina and the Charlotte, Columbia and Augusta.

In the opinion of the Court it is stated "Much of the coal was delivered directly from the mines to points on the Richmond and Danville at which the Central Railroad and Banking Company of Georgia had no possible concern." (Page 353.) And again: "Much of the coal was shipped directly to its (the Danville's) various agencies." Page 354.

We respectfully submit that these conclusions of the Court are not only wholly unwarranted by the evidence, but they are contrary to the agreement of Counsel as to the truth of the case, to the uncontradicted testimony, and that they go beyond the utmost claims made on this point by the Central's Counsel in this record.

(a) At the beginning of the case the following agreement of Counsel was made:

"It is agreed that the coal described in the exhibit to the intervention by amounts and dates of shipment was delivered by the Intervenor to the railroad lines of the Central Railroad and Banking Company of Georgia, which was being operated by the Richmond and Danville Railroad Company till the 4th of March last, at the dates and in the amounts shown by said exhibits.

"This agreement is made with the reservation of the right to show and to prove any error in said exhibits should it hereafter be discovered."

This agreement was signed by Lawton & Cunningham for the Central, and Henry Jackson for the Danville (page 85).

There never was any attempt afterwards made in pursuance of this reservation to prove any error in the exhibits as to the delivery of the coal along the lines of the Central, except as to trifling amounts. So far as concerns the coal that was used at Augusta by the three railroads above mentioned, that was properly delivered, because Augusta was the headquarters of Division Superintendent, Epperson, to whom coal was consigned under the contract; and, therefore, the conclusion of the Court

that some of the coal was shipped to points with which the Central had no concern, and shipped direct to various agencies of the Danville, is contrary to the solemn agreement of Counsel for the Central that all the coal was delivered to the railroad lines of the Central Railroad and Banking Company of Georgia. We respectfully submit that on questions of fact the case must abide by agreements of Counsel as to the truth of the case.

(b) The Master's report, in his seventh and eighth findings (page 86, 87 and 277), finds that the coal was delivered in pursuance of the contract and within its terms along the lines of the Central Railroad and Banking Company of Georgia.

(c) The report of the experts who represented the Intervenor and the Danville, and who testified that at each point which they visited they were assisted by the local agents whom the Central designated to assist them in making up their reports, shows that the coal (with exceptions which are trifling in quantity) was delivered along the lines of the Central Railroad and Banking Company.

(d) It was not even claimed by the Counsel for the Central in the exceptions which they filed to the Master's report, that any relatively large amount of this coal was diverted from the Central lines. We omit for the present the question as to the liability for the coal taken at Augusta by the three railroads above mentioned, and refer to the exceptions filed by Counsel for the Central to the report in the Virginia case. (See item headed Recapitulation, on page 114, where it is claimed that 448 tons of coal was delivered to "miscellaneous corporations.") These miscellaneous corporations are shown on page 113. One of them, for instance, is the Crystal Ice Company. This is a corporation (see page 19) located at Columbus, Georgia, which is one of the principal points of the Central lines; and the only legitimate inference to be drawn is that the officers operating the Central sold a small amount of coal to this Ice Company and doubtless received the money for it. The exceptions

of Counsel for the Central to the report of the Master in the Sloss case (see Recapitulation, page 296) claim that of the Sloss coal twenty-nine tons were delivered to the Georgia Southern and Florida Railroad. This railroad has headquarters at Macon, one of the principal points on the Central lines, and the only legitimate conclusion from the evidence, is that this was a small temporary loan of coal by the Central to the Georgia Southern, which was either paid for or perhaps off-set by some temporary loan which the Central may have made from that railroad. It is a well known fact that Railroad Companies sometimes accommodate each other in small and temporary transactions of this kind.

The same remark applies to the small amount of twenty-five tons delivered to the Georgia Midland Railroad (page 117.) This railroad runs from Griffin to Columbus. Both of these points are on the lines of the Central, and this trifling transaction represents either the sale or the loan of twenty-five tons.

The exceptions quoted further claim that of the Virginia Company's coal 419 tons are "unaccounted for, and of the Sloss Company's coal 158 tons are "unaccounted for;" but this is explained by the experts, who say (see testimony quoted, page 115) that this coal was probably carried on work trains; and hence no record of unloading kept. But it must be remembered that the Central's Counsel had agreed to the fact as true that the coal was delivered along the Central lines, and thus assumed the onus of showing any exception to that rule; and any deficiency or failure of proof, leaving any coal "unaccounted for," operates against the Central.

Hence, we say that except with reference to the coal used at Augusta, there is not the slightest evidence in the record to show that any except the Central Railroad obtained the benefit of the coal shipped by the Intervenor. The fact that a large amount of coal belonging to these Intervenor was found on the Central bins by the experts, and the fact that the cars which had been started from the mines prior to the 4th of March, 1892, were

taken possession of when they arrived by the agents of the Central's Receivers, shows conclusively that the coal was so shipped as to reach the proper bins on the Central.

It only remains to consider the liability of the Central for the coal, which was used at Augusta by the three railroad companies above mentioned.

1st. As to the Port Royal and Augusta and the Port Royal and Western Carolina, which will be considered together because they stand precisely on the same footing:

(a) The lease shows that the stock of these two railroads was transferred by the Central to the lessor (see page 24.) The Central filed its dependent bill in which it alleged that it controlled these railroads, and that they were a part of its system, and these railroads filed answers sworn to by their officers, in which they stated (pages 12 and 13) that they admitted that the Central was the owner of their stock and bonds, and that the Central operated these railroads as a part of its system.

The Receivership of the Central was extended over these two railroads, and they were operated by the Receivers up to as late a date as June 16th, 1893, at which time they were discharged by the order of his Honor, Judge Pardee.

By this late date all the coal that had been shipped in pursuance of the contract, had been long ago consumed, and therefore the subsequent discharge of these railroads from the Receivership does not seem to be material.

We insist in view of the above evidence as to the relation of these two corporations to the Central that if the Central is bound under the contract, or under the rule in *Fosdick vs. Schall*, or under the Statute of Georgia, then it is just as much bound for the coal which was used upon these two dependent and controlled lines, as upon any other part of this system.

Apparently, the Court below resolved this contention in our favor, for the opinion states, with reference to the coal received by the Receivers:

"It is true that some of this coal was delivered to the Port Royal and Augusta Railroad and the Port Royal and Western Carolina Railroad, and perhaps other railroads, but they were roads under the control of the Central, and were operated as a part of its system, and these roads have no doubt accounted to the Receivers for the coal which they received. (Page 355.)

As to the coal used by the Charlotte, Columbia and Augusta Railroad Company, the Central is, of course, liable, if we are right in the argument heretofore made, namely: that the Central was bound by the contract, either directly by its terms, or bound by it because made by the Richmond and Danville, or otherwise; because if the contract was binding, then the Central is liable to the Intervenor, even though it may have sold a part of the coal to another railroad company. The Court will have no hesitation in reaching the conclusion that in parting with this coal the Central in some way received consideration for the same. The coal was either sold to the Charlotte, Columbia and Augusta, or it may have been loaned to them in conformity with the usage to which reference has already been made, and any uncertainty as to proof makes the Central liable, by virtue of the agreement of counsel as to the fact of delivery to the Central.

If, however, the Court should be of the opinion that, under the rule of *Fosdick* against *Schall*, the Central is only liable for that portion of the coal which was used upon its own lines, then it is undoubtedly true that the supplemental report of the Master will be sustained to the extent of deducting from his original report the value of two thousand, one hundred and twenty-four tons of coal which was used by the Charlotte, Columbia and Augusta Railroad, and we respectfully insist that this certainly is the only exception that can be made to the liability of the Central for the entire amount of the coal.

The liability of the Central for the coal used on the Savannah and Western Railroad is too plain for argu-

ment. That road was placed under the Receivership by an amendment in the Rowena Clarke bill, at the hearing, alleging that the Central owned its capital stock and operated it (page 5.) It has been operated by the same Receiver as the Central since that time.

Coal on the Bins.

If the foregoing propositions are sound, the Intervenor has a preferential debt against the Central, under the rule in *Fosdick vs. Schall*, arising under the contract; but if the Court is of opinion that the preceding argument does not state the law of the case, Intervenor claims that, independent of the contract and because the contract is rejected as the basis of their rights, they have a claim arising on a *quantum valebat* against the Receivers of the Central for the value of their coal on the bins March 4th, 1892.

The facts upon this branch of the case are set forth in the statement of the case. It is to be noted that the Receivers filed no answer to the verified amendment alleging that they took possession of a large amount of Intervenor's coal which was unpaid for, nor to the petition alleging that their books, coal chute reports, etc., would show the amount of such coal. They raised no issue in the pleadings; but contented themselves solely with a criticism upon the proof offered by Intervenor.

(a) The division agreed upon by the coal companies (page 228) was the only possible method of pro-rating. It was perfectly fair to the Receivers, because under no circumstances could they be charged with more than the amount of coal proved to be on the bins.

(b) The evidence was satisfactory to the Master. His finding upon the question of fact is, at least, *prima facie*, correct.

(c) The evidence was satisfactory to the Court; this inference is inevitable from the fact that the Court rejected the Intervenor's claim, not upon the ground of

a want of proof, but upon the ground that the lessee got possession at the time of the lease of an equivalent amount of coal.

As to this view, adopted by the Court below, we submit:

(a) There was no evidence that the Central turned over any coal to the lessee except the recital in the lease that the lessee took the Central as a running road. Intervenor proved specifically and positively the amount of coal on hand March 4, 1892. If the fact that the lessee at the time of the lease, June 1, 1891, got possession of the Central's coal then on hand, was a matter of defense, then it was incumbent on the Central to show how much coal was on hand June 1, 1891. This was not done, nor attempted. Ryan testified that he had been making very heavy shipments—more than average shipments—just prior to the Receivership, and that the Central had a large amount of coal on hand March 4, 1892. If the coal on hand June 1, 1891, was used by the Central as a set-off, the Central should have shown at least that it was an equal amount.

(b) The argument that the Receivership should restore the status of the parties at the time of the lease is really an argument for the Intervenor. For the Court below in calling attention to the fact that the lessee took the lessor's supplies as a running road, ignores the concomitant fact that the lessee also assumed and paid the current debts for supplies. (Lease, page 37.) Complete adjustment of the relations of the parties requires that the Central, which took the supplies March 4, 1892, should pay the current debts for those supplies.

The true view, however, is that this matter is wholly one for accounting between the Central and Danville, and it cannot affect in any way the rights of the Intervenor.

But the Counsel for the Central do not rest their contention upon the view taken by the Court. They attack the sufficiency of the evidence, although that was

satisfactory to the Master and apparently so to the Court. The mode of arriving at the amount of the coal on the bins has been set forth in the statement of facts. Expert testimony shows it was the only method possible, and that it was fair and just. But the Central insists that in the 18,426 tons on the bins, there was probably some coal that had been paid for, and perhaps even some that the Central had on hand June 1, 1891. But this is manifestly far-fetched and practically impossible. Ryan testified that the Central usually kept on hand two or three weeks supply of coal (p. 130); so that the 18,426 tons on bins March 4, 1892, was coal that had been recently shipped, and which is represented by the later items in the account. The coal on hand, June 1, 1891, and the coal represented by the oldest items of the accounts of the coal companies had been consumed months before; and the supply renewed probably as often as ten times before the particular supply on hand March 4, 1892, was placed in the bins. The contract itself provides "settlements for the coal delivered in any one month, to be made on or about the first of the *second succeeding month*." So that there is no ground for the contention that any of the coal had been on hand long enough to be paid for.

The retention and use by the Receivers of the coal on the bins was an adoption of the contract.

Sunflower Oil Co. vs. Wilson, 142 U. S., 313, page of decision, 322.

The Receivers were liable for this coal as well as for that which arrived after March 4, 1892. Their liability for the latter is not now denied.

But if the contract be ignored, then the claim of Intervenor for the coal on the bins is a charge for which the Intervenor has a lien, under section 278 (a) of the Code, according to the construction insisted upon by counsel for the Central; and since the claim rests on *quantum valebat*, it is a debt for the coal at its market value at the places of delivery. This proposition is discussed under the next head.

Receivers Liable for Coal, if Contract Ignored, at Market Value.

When this branch of the case is reached, the logic of the counsel for the Central takes a complete somersault. Throughout the whole discussion, their argument ceaselessly reiterates Danville, *Danville*, DANVILLE. But when the Interveners, for the sake of the argument, meet them upon their own ground and assume that the contract is not in the case and therefore charge the Central with the proven market value of the coal at the places of delivery, presto! our opponents throw down the Danville cloak in which they have been hiding and in all the nakedness of truth exclaim, "We, *the Central*, hauled the coal, earned the freight which gave to the coal its market value, and therefore, *we*, the Central, claim the benefit of the contract price.

But the contention, in addition to its grotesque inconsistency, does not rest upon any sufficient evidence. The average price of coal at the mines for 1891-2, was (not 90 cents as per this contract) but \$1.02 (page 306) : and the freight from the mines to Birmingham, which was not over the Central lines, which the coal companies paid, was 25 cents per ton ; thus adding a total of 37 cents per ton to the value at Birmingham. Hence there is no consistent theory on which the Receivers can get the benefit of the low contract price except the Interveners theory, that the contract is to be enforced as the measure of the rights of the parties.

Walter B. Hill.

Sole for Interveners

No. 100.

FILED

OCT 25 1897

JAMES H. MCKENNEY

CLERK

Brief of Hill for Appellant.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

Filed Oct. 25, 1897.

THE VIRGINIA AND ALABAMA COAL COMPANY, SUING
IN ITS OWN BEHALF AND FOR THE USE OF THE
SLOSS IRON AND STEEL COMPANY, APPELLANT,

vs.

THE CENTRAL RAILROAD AND BANKING COMPANY OF
GEORGIA, ET AL.

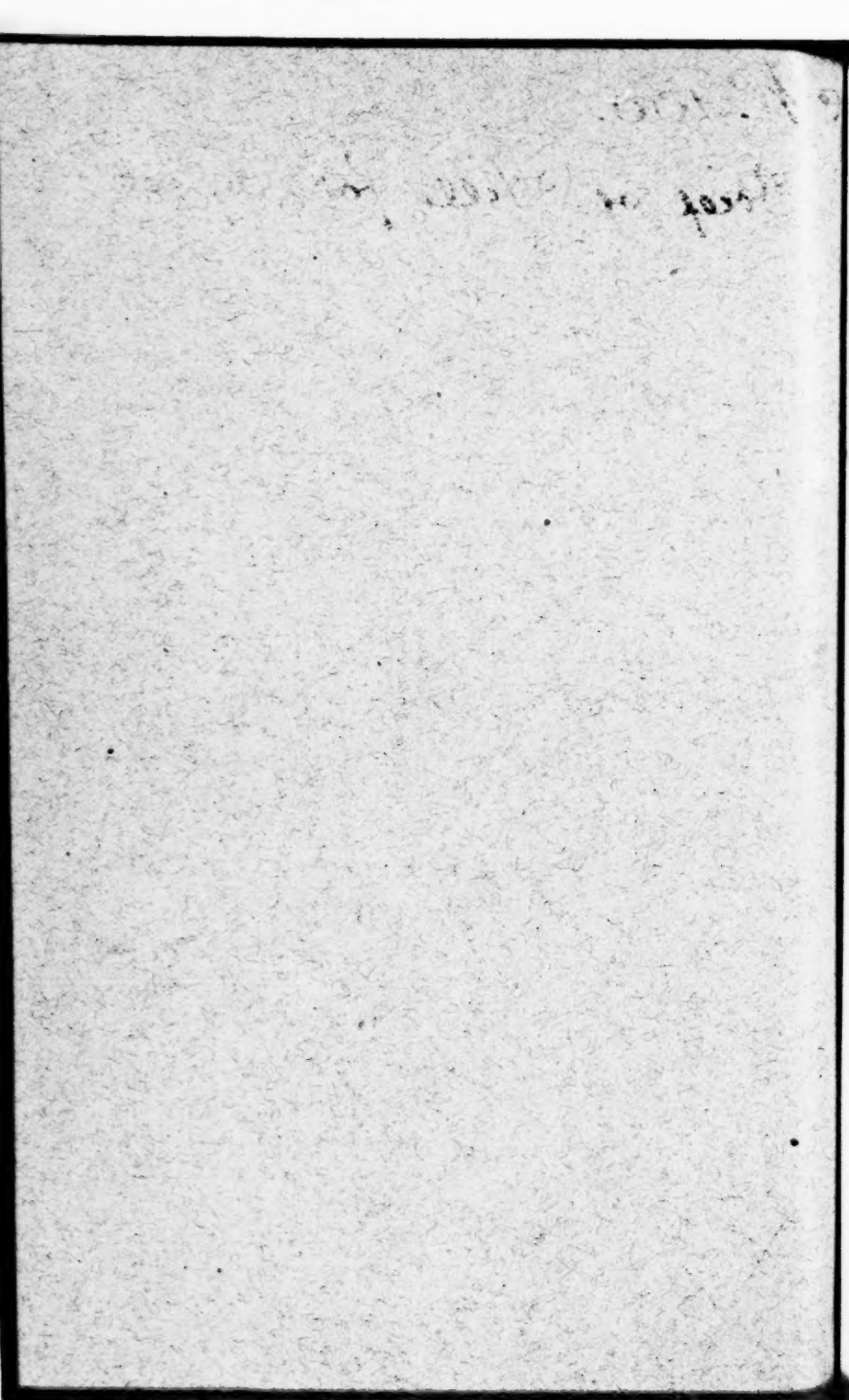
ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIFTH CIRCUIT.

BRIEF FOR APPELLANT.

*The equity of Fosdick vs. Schall can not be defeated by the contrivance
of a lease.*

WALTER B. HILL,
N. E. HARRIS,

For Appellant.



IN THE
SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 100.

THE VIRGINIA & ALABAMA COAL COMPANY,
Appellant,

VS.

THE CENTRAL RAILROAD & BANKING COMPANY
OF GEORGIA, *et. al.*

*On Writ of Certiorari to the United States Circuit Court of
Appeals for the Fifth Circuit.*

BRIEF OF WALTER B. HILL & N. E. HARRIS for *Appellant.*

STATEMENT.

This was a suit for coal furnished by the Virginia & Alabama Coal Company, hereafter called the Virginia Company, and the Sloss Iron and Steel Company, hereafter called the Sloss Company, for the operation of the Central Railroad & Banking Company of Georgia, hereafter called the Central, while operated by the Richmond & Danville Railroad Company, hereafter called the Danville. All the coal was furnished within less than six months prior to the appointment of Receivers for the Central. The Central was leased to the Georgia Pacific; the Georgia Pacific was leased to the Danville; and the Danville under color of this lease was operating the Central.

On June 1st, 1891, the Central was leased to the Georgia Pacific Railroad Company ; (Lease, pp. 16-33), and on the same day the Danville (to which the Georgia Pacific was already leased) went into the possession of the Central and operated the same till March 4th, 1892, at which date the Receivers of the Central were appointed (pp. 2-3).

The lease transferred not only the main lines of the Central, but various lines which it controlled by lease and by stock ownership. It further provided that the lessees should take possession of the leased property as a running road, taking such fuel and other supplies as it then had in possession, and on the other hand obligating the lessees to pay the current debts of the lessor Company for supplies, etc. (Lease, p. 28.)

The lease also provided that the lessee should pay the interest on the bonds and debentures of the Central and of the lines upon which the Central had guaranteed interest on bonds, and also dividends on the stock of the Central. (Lease, pp. 26-27 ; clauses 2, 3 and 4.)

In connection with this clause in the lease, it is appropriate to notice at this point the agreed statement of facts (Record, p. 12-13 ; Clause 14) that the semi-annual interest on the Five Million Dollars of mortgage bonds of the Central was paid in January, 1892, (the order appointing the Receiver being dated March 4th, 1892.) It is also an agreed fact that during the Receivership the Central expended for betterments on its Railroad lines from the income of the roads during the Receivership, a sum much larger than the entire claim of the coal companies, (p. 13.)

To set aside this lease, Mrs. Rowena M. Clarke, a stockholder, brought her bill against the Central under which a Receiver was appointed March 4th, 1892. The Danville and Georgia Pacific disclaimed any rights under the lease, surrendered the property without attempting to assert any right to hold it, and no issue was raised in relation to the lease such as

On July 13th, 1891, a contract was made with the Virginia Company for the purchase of a year's supply of coal to operate the Central lines. The contract is as follows: (p. 36.)

RICHMOND & DANVILLE RAILROAD CO.,
JOSEPH P. MINITREE, OFFICE GENERAL PURCHASING AGENT,
GENERAL PURCHASING AGENT. ATLANTA, GA.

The Virginia & Alabama Coal Co.
Mr. J. R. Ryan, V. P. and G. M., Birmingham, Ala.:

DEAR SIR.—We beg to accept your verbal offer of to-day to furnish the C. R. R. & B. Co. of Ga. with say 275,000 tons of best quality engine steam coal for the next twelve months, commencing July 1st, 1891, and ending July 1st, 1892, at 90 cts. per ton of 2,000 lbs., to be delivered on cars at the mines and to be shipped at times and in quantities to suit. Settlements for the coal delivered in any one month to be made on or about the first of the second succeeding month; and the C. R. R. & B. Co. of Ga. reserves the right to increase or decrease the monthly deliveries upon reasonable notice at any time. The Division Superintendents of the Divisions for which the coal will be required will communicate with you as to the monthly deliveries, and all bills for coal furnished under this contract to be sent direct to the Division Superintendents. Kindly confirm this at once and oblige.

Yours truly,

(Signed.)

July 13, 1891.

Yours truly,

JOSEPH P. MINITREE,
General Purchasing Agent.

The Master found under the evidence that this was a contract with the Central. (p. 62, par. 6.) The finding was based on the contract itself, and on the testimony of J. R. Ryan, Vice-President and General Manager of the Virginia Company, who testified positively that he made the contract with the Central, and that he would not have contracted except with the Central. He stated that Mr. W. H. Green, the General Manager of the Danville (after negotiations as to the terms of the contract were completed), "wrote it out in the name of the Richmond & Danville Railroad, and I told him I was compelled to reject it. He told Mr. Minitree and said, 'you can contract with the Central,' and that is all I know about it.'" (p. 93-94.)

Ryan further testified that "he (Minitree) told me he was Purchasing Agent of the Central Railroad also, or I would not have signed it, because I would not have accepted it as being made by the Richmond & Danville," (p. 94.)

"Nobody told me that they would take the contract in the name of the Central; I told them that I would not take it in any other way. I said: 'If you cannot make it in the name of the Central Railroad of Georgia, I cannot contract with you.' I was very explicit, because I expected to have trouble with the coal mines." (p. 98.)

The reason why the witness was so positive and explicit on this point was this: Various Southern Coal Companies had agreed not to underbid each other in the sale of coal to various corporations. The agreement was such as to give to each coal company the sale of the coal in its own natural territory (Ryan's testimony, p. 97), (Seddon's testimony, pp. 203-204.) Under this agreement the Virginia Coal Company was bound not to sell to the Danville; but was free to sell to the Central (Ryan's testimony, p. 97.) Ryan testifies that he was under a "moral obligation" not to sell to the Danville, which obligation he would not violate, (p. 98.); that he knew in a general way of the lease, but did not know its nature; did not understand that selling to the Central was the same thing as selling to the Dan-

ville ; was honest and sincere in making the contract with the Central, (p. 98.)

Afterwards Mr. Seddon, President of the Sloss Company complained that this contract had been made. He testified: "I went to Mr. Ryan and told him that I did not think I had been properly treated in that matter, that he had made a contract with the Richmond & Danville when he said that he would not. He said he hadn't made it, 'I refused positively to do it,' and says, 'I made the contract with the Central Railroad Company,' and said further that Captain Green and Captain Manintree said they had authority to contract for that company." (p. 204).

In pursuance of this contract the Virginia Company between September 16th, 1891, and March 4th, 1892, shipped to the Division Superintendents (Curran at Macon, Dill at Savannah, and Epperson at Augusta,) coal to the amount (per contract price of 90 cents per ton) of \$26,607.44. The Sloss Company, under the same contract by the consent of both parties, supplied coal to the amount of \$14,359.38. All bills were made out in the name of the Central (Ryan's testimony, p. 103).

It is an agreed fact that the coal was delivered by the Intervenor to the (R. R. lines of the) Central. (p. 61).

The price at which the Central got the coal was less than under the "strongest competition" ever existing in the south (Ryan's testimony, p. 103-104.) The Central made 20 cents per ton by the contract. (Seddon's testimony, p. 204).

E. P. Alexander, a director of the Central Railroad, testified that the lease of the Central and the taking possession thereof by the Danville, was a matter of common notoriety ; that after the lease the Central carried on no business except the banking business, and had no other employes except such as "were necessary to maintaining the organization of the Railroad Company which had parted by lease with its railroad lines and shops, or the maintaining of the same ;" that Joseph P. Minitree had no connection with the Central prior to the lease, but that

when the lease was made his jurisdiction as purchasing agent was extended over the Railroad lines of the Central by order of W. H. Green, General Manager of the Danville ; (p. 150).

The Interventions (Virginia Company's p. 34, Sloss Company's p. 153,) set out the contract, the former Company suing (by amendment allowed) for the use of the latter. The Central, the Receivers thereof and the Danville (which had not then been placed in hands of Receivers) were made defendants. The defendants demurred. (Demurer by Central, pp. 48, 169, 170, by Danville, p. 49). The questions raised by the demurrers were reserved for the final hearing, (p. 50.)

None of the defendants filed answers.

By amendments (pages 51 and 172) intervenors alleged that while much of the coal was used in operation of the Central prior to the receivership, that a large part of the coal shipped was upon the bins of the Central at the time of the appointment of the Receiver, March 4th, 1892, and that some of the coal arrived after March 4th, and likewise went into the possession of the Receivers, and was worth in market value more than the contract price.

No answers were made to these amendments.

The Intervenor petitioned for the production of the books and documents (coal chute reports, etc.) which would show how much of the coal was on hand as above set forth. (p. 54).

In lieu of producing this documentary evidence, an agreement was made by Counsel for all parties that the Intervenor should appoint one expert, the Danville another, and the Central another, to investigate the matter and report. The Intervenor appointed C. H. Schoolar, the Danville W. B. Starke, and the Central was represented by the local agents in charge of each coal chute station when the investigation was made. (pp. 108, 113, 115).

The agreement was sanctioned by the Court. (p. 56-57.) The investigation occupied several weeks, was very "thorough

and careful," (Schoolar's testimony, p. 114,) and the reports made were unanimous. No dispute was made by the agents of the Receiver as to the correctness of the data for the report or the basis on which it was made. (Schoolar's testimony, p. 114).

After the reports were filed the Central only offered evidence tending to show an error in the amount on one bin. (p. 148, 149).

The Master's report finds that coal of the Virginia Company, worth \$13,735.89, was used prior to the Receivership; that coal worth \$6,700.50 was on the bins at the time of the appointment of the Receiver; and that coal worth \$6,171.30 was received by the Receiver after his appointment; (Report p. 62-63, par. 9;) and that of the coal of the Sloss Company, coal worth \$10,320.17 was used prior to the appointment of the Receiver; that coal worth \$3,818.00 was on the bins March 4th, 1892, and that coal worth \$776.00 arrived after the appointment of the Receivers. (Report, page 175).

The Circuit Court decreed that the Receivers of the Central pay for the coal which arrived after the Receivership; and no question is made by the petitioners here as to that.

The *pro rata* amount of the total coal of each Intervenor on the bins was arrived at as follows: The Virginia Coal Company being unable to supply the whole amount of coal under the contract, brought in three other companies, to-wit: The Sloss, Corona, and Little Warrior, to supply certain portions of coal under its contract. No other company furnished coal to the Central within a year previous to the receivership. This was the finding of the Master (p. 63, par. 12). The only doubt thrown upon this fact arose from the testimony of C. H. Schoolar, (page 117), that he saw on the books of the Central while examining its coal records, the name of the Tennessee Coal and Iron Company. This doubt was removed by the testimony of the General Manager of that Company, that it furnished no coal to the Central within a year, and that it had

no claim to any of the coal on the bins (page 143). The coal of the four companies having been mingled in the bins, any separation was, of course, impossible; and they entered into an agreement *inter sese* that they would only claim as against the Receivers such part of the total coal on the bins as was in proportion to their respective debts (see agreement, page 142). This method of pro rating was the only method possible. C. H. Schooler testified, as an expert, that the method was fair and just to all parties. (p. 115).

A question arises in the case as to the price of the coal at which the Receivers should account for the value of the coal used by them, to-wit: that received by them after their appointment, as well as that which was on the bins. The average market value of the coal of the Virginia Company used by the Receivers at the places of delivery was \$2.74 per ton, (Master's Report, p. 65,) making the coal so used worth \$39,061.19, (Master's Report, p. 65). The average market value of the coal of the Sloss Company used by the Receivers was \$2.50 per ton (Master's Report, p. 176) making the coal worth \$12,077.56.

On this branch of the case the Intervenors contended that the Receivers could not claim the benefit of the low contract price without adopting the contract. The Central insisted that the value of the coal over the contract price was due to its freight, and that the freight was earned by the Central lines.

The Master found that the contract sued on was the contract of the Central, and that the debt of the Intervenors constituted a preferential debt under the rule of the case of *Fosdick vs. Schall*, and gave judgment to the Intervenors for the full amount of their claims against all of the defendants, and that upon the payment of the claims by the Central that Company should be entitled to recover the amount thereof from the Danville. (Report in the Virginia Company's case, (p. 58, 68). Report on the Sloss Company's case, (p. 172-179). He reduced the amounts by supplemental reports, (pp. 73, 180,) by deducting the value of the certain coal used from the Central's bins at Augusta by

the Port Royal & Augusta R. R., the Port Royal & Western Carolina R. R., and the Charlotte, Columbia & Augusta R. R.

All the defendants excepted to the Master's Report. (Exceptions of the Central, pp. 77, 182; Exceptions of Danville, pp. 74, 181). The Intervenor excepted to the Supplemental Report. (pp. 76, 193). They insist that the railroads mentioned (except the Charlotte, Columbia & Augusta) were controlled by the Central through a stock ownership, and were part of the Central system. These corporations stated in their answers that the Central controlled them by a stock ownership. (p. 10-11.) They were discharged from the Receivership, June 16, 1893. (p. 12). Intervenor insist that the coal they used was used prior to the latter date.

The Circuit Court set aside the Master's Report and held the Central and the Receivers liable only to the extent of the coal which arrived after March 4th, 1892, and for that, holding them liable to the contract price. (Opinion p. 231, Decree p. 236). The Intervenor excepted.

The Circuit Court of Appeals reversed the judgment of the Circuit Court. Their opinion is found in Record p. 254-258, and 66 Fed. Rep. 803. It is reprinted herein for convenience of reference.

STATEMENT OF THE CASE BY PETITIONERS CONTROVERTED.

It is stated on page 3 of the petition for *certiorari* that "a succinct statement of the facts and issues in the case, as *presented to the Circuit Court of Appeals*, is hereto attached as Exhibit B, and made part of this petition."

Exhibit B is a reproduction of the statement of the case made in the briefs of counsel for the Central Railroad Company, in the Circuit Court of Appeals, except that it superadds at the end thereof the following new paragraph:

(23.) It is not true, as petitioners are advised, that it appears from the record that there was a diversion of the income from the earnings of the leased railroad to the payment of the interest on the bonds of the Central R. R. & B. Co. of Georgia, in January, 1892, within the meaning of the rule in Fosdick's case. What the record discloses is that the lessee had transferred to it, under the lease, not only the road, but the income from several million dollars of stocks and bonds owned by the Central Company, which was more than sufficient to pay the interest on its mortgage debt (printed transcript, pp. 18-22). And that the lessee agreed to pay, as part of the rental, the interest on the mortgage indebtedness of the Central Company (printed transcript, p. 26), and that the interest on the mortgage debt falling due in January, 1892, was paid. This is the full extent of the stipulation in the record on this point (printed transcript, p. 12, clause 14). The contention of the Central Company, as made by the record, is that the income of the railroad during that period was appropriated by the Danville Company, and that issue is pending elsewhere (printed transcript, p. 8).

An examination of the statement of the case and brief of the argument made in the Circuit Court of Appeals by the appellee (the petitioner here) will show that no such contention was intimated or urged in that court.

It is enough to say that the record does not support this new contention.

The references made by petitioner are to pages 18 and 22 of the printed record. Nothing is shown by these references to the lease except that by its terms the Central turned over certain stocks and bonds to the lessee company. There is no evidence whatever that the latter company ever received one dollar of income therefrom; paragraph 23 above quoted rests upon a mere inference, wholly unauthorized; an inference not even suggested in the Circuit Court of Appeals. That Court found the fact to be as follows:

"In this case the equities are especially favorable to the intervenors, for it appears that there was a diversion of the income for the payment of the interest on bonds of the Central

Railroad in January, 1892, some two months before the Receivers were appointed; and it also appears that the Receiver expended from the income for improvements on the railroad property a sum much larger than the claims of the intervenors." (257.)

DECISION OF THE CIRCUIT COURT OF APPEALS.

For convenience of reference, the decision under review is here printed. It is found in Record p. 254-8, 66 Fed. Rep. 805-7.

The statement of the case by the Circuit Court of Appeals, is as follows :

"This is a suit brought by intervention for coal furnished by the intervenors, the Virginia & Alabama Coal Company and the Sloss Iron & Steel Company, for the operation of the Central Railroad & Banking Company of Georgia while being operated by the Richmond & Danville Railroad Company. All the coal charged for as furnished before the appointment of receivers for the Central Railroad Company was furnished within less than six months prior to such appointment. The Central Railroad was leased to the Georgia Pacific Railroad Company; the Georgia Pacific was leased to the Richmond & Danville Railroad Company; and the latter company, under color of this lease, was operating the Central Railroad lines. On June 1st, 1891, the Central was leased to the Georgia Pacific Railroad Company; and on the same day the Richmond & Danville, (to which the Georgia Pacific was already leased) went into the possession of the Central and operated the same till March 4th, 1892, at which date the receivers of the Central were appointed. The lease transferred not only the main lines of the Central, but various lines which it controlled by lease and by stock ownership. It further provided that the lessees should take possession of the leased property as a running road, taking such cash and credits as were then due, and on the other hand obligating the lessees to pay the current debts of the lessor company for supplies, etc. *The lease also provided that the lessee should pay the interest on the bonds and debentures of the Central and of the lines upon which the Central had guaranteed interest on bonds, and also dividends on the stock of the Central. It appears from the agreed*

statement of facts that the semi-annual interest on the \$5,000,000 of mortgage bonds of the Central was paid in January, 1892, (the order appointing the Receiver being dated March 4th, 1892.) It is also an agreed fact that during the receivership the Central expended for betterments on its railroad lines, from the income of the roads during the receivership, a sum much larger than the entire claim of the intervenors. To set aside the lease, Mrs. Rowena M. Clarke, a stockholder, brought her bill against the Central Railroad under which a receiver was appointed March 4th, 1892. The Richmond & Danville and Georgia Pacific Companies disclaimed any rights under the lease, and no issue was raised in relation thereto such as to require decision as to the validity or invalidity of the lease, and such question has not been determined. Shortly afterwards the Central Railroad filed a dependent bill, under which the same receivership was continued, and under which it was also extended to the Port Royal & Augusta Railroad and the Port Royal & Western Carolina Railroad. The Farmers' Loan & Trust Company, the trustee for the mortgage bondholders of the Central Railroad, afterwards filed its dependent bill in said cases, under which the same receivership was continued. All these cases were afterwards consolidated. On July 13, 1891, a contract was made with the Virginia Company for the purchase of a year's supply of coal to operate the Central lines. The contract stipulated for 90 cents per ton of 2,000 pounds, to be delivered on cars at the mines, and to be shipped at times and in quantities to suit. In pursuance of this contract the Virginia Company, between September 16, 1891, and March 4, 1892, shipped to the Division Superintendents (Curran at Macon, Dill at Savannah, and Epperson at Augusta), coal to the amount (per contract 90 cents per ton) of \$26,607.44. The Sloss Company, under the same contract, by the consent of both parties, supplied coal to the amount of \$14,359.38, but at an agreed price of 95 cents per ton. All bills were made out in the name of the Central Company. The price at which the Central Railroad got the coal was 7 or 8 cents per ton less than the market price at that time. It appears that while much of the coal was used in the operation of the Central Railroad prior to the receivership, a large part of the coal delivered was in its bins at the time of the appointment of the receivers on March 4, 1892, and went into their possession and was used by them, and that some of the coal was received after that time, and likewise

went into the possession of the receivers. *An agreement of counsel is found in the record as follows: 'It is agreed that the coal described in the exhibit to the intervention by amounts and dates of shipment was delivered by the intervenor to the railroad lines of the Central Railroad & Banking Company of Georgia, which was being operated by the Richmond & Danville Railroad Company till the 4th of March last, at the dates and in the amounts shown by said exhibits.'* It, however, appears that some of the coal delivered to the Central Railroad was used by several other railroads known as the Port Royal & Augusta, the Port Royal & Western Carolina, and the Charlotte, Columbia & Augusta Railroads. The Master's Report finds that coal of the Virginia Company worth \$13,735.89 was used prior to the receivership; that coal worth \$6,700.50 was in the bins at the time of the appointment of the receiver, and that coal worth \$6,171.30 was received by the Receiver after his appointment, and that, of the coal of the Sloss Company, coal worth \$10,320.17 was used prior to the appointment of the Receiver; that coal worth \$3,818 was in the bins March 4, 1892, and that coal worth \$776 arrived after the appointment of the receivers. The Circuit Court held the Central Railroad and the receivers liable only to the extent of the coal which was delivered after March 4, 1892, (holding them liable at the contract price), and rendered a decree accordingly. From that decree the intervenors appealed."

OPINION OF THE COURT.

"Before Pardee and McCormick, Circuit Judges, and Toulmin, District Judge.

"Toulmin, District Judge, after stating the case as above, delivered the opinion of the Court.

"From what appears in the record we are satisfied that the debts claimed by the intervenors for coal delivered prior to the appointment of the Receivers, were current debts for operating expenses of the Central Railroad lines, made in the ordinary course of business, to be paid out of the current earnings. The coal was purchased in the name of the Central Railroad. It was delivered on its lines, and was furnished for their operation, and, with the exception of a small amount was used by them, there was evidence that the contract for the purchase of the coal was

made by the Central Railroad, and the Master so found. The Circuit Court, however, differed with and overruled the Master in such finding.

" In our view of the case, it makes no difference whether the contract for the purchase of the coal was made by the Central Railroad or by the Richmond & Danville Railroad. The coal was delivered on the lines of the Central Railroad, and was furnished for and used in their operation. The Richmond & Danville Railroad Company had the possession of the Central Railroad lines, was operating them, collecting their revenues, and was under the obligation to pay out of their earnings the current expenses and the interest on their bonds. But whether that possession was lawful or otherwise, or whatever the relations between the two Railroads may have been, we think that the Central Railroad was liable for the necessary supplies furnished and used for the purpose of keeping its road in successful operation, and carrying on its business as a common carrier. Such debts are preferential, and the persons to whom they are due are entitled to have the income of the Receivership used in the payment of them, as the Railroad Company would have been bound in equity and good conscience to use it if no change in the possession of the property had been made. *Farmers' Loan & Trust Co. vs. Kansas City, W. & N. W. R. Co.*, 53 Fed., 182; *Burnham vs. Bowen*, 111 U. S., 776, 4 Sup. Ct., 675; *Fosdick vs. Schall*, 99 U. S., 235. In this case the equities are especially favorable to the intervenors, for it appears that there was a diversion of the income for the payment of the interest on bonds of the Central Railroad, in January, 1892, some two months before the Receivers were appointed; and it also appears that the Receiver expended from the income for improvements on the railroad property a sum much larger than the claims of the intervenors. Our opinion is, that the Receivers are liable not only for the coal which they received after their appointment from unloaded cars, but that they are equally liable for the coal which was in the bins at the date of their appointment, and which they took possession of and used in the operation of the Central Railroad lines, and that, as representatives of the Central Railroad & Banking Company of Georgia, they are also liable for the coal delivered to and used by the Central Railroad lines prior to their appointment, and which was then unpaid for. For that portion of the coal used at Augusta by the three railroads there, as

shown by the evidence, the Central Railroad and the Receivers are liable, except as to that used by the Charlotte, Columbia & Augusta Railroad. It appears that the other roads mentioned were under the control of the Central Railroad and were a part of its system. The Charlotte, Columbia & Augusta Railroad was not. It does not appear that the Court, in appointing the Receivers, made any provision for the payment of the intervenor's claims, but as there is evidence in the record showing that current earnings, before the Receivers were appointed, were diverted to paying interest on the bonded debt, and that after their appointment they made large permanent improvements on the railroad property, the intervenors should be allowed payment of their claims from the corpus of the property, should the earnings in the hands of the Receivers be insufficient to pay them.

"The intervenors are only allowed the price stipulated for, and which they expected to receive, when the coal was delivered, and which is, in fact, the price claimed in their petition of intervention. In our opinion, the view which the Circuit Court took of this case was an erroneous one, and the decree must be reversed, and the case is remanded to the Circuit Court with instructions to enter a decree in favor of the intervenors for the amounts respectively due them for coal delivered to the lines under the control and forming a part of the system of the Central Railroad & Banking Company of Georgia, as shown by the evidence in this case, including the coal furnished before the appointment of the Receivers, and that found in the bins at the time of such appointment, and of which the Receivers took possession, as well as the coal delivered to the Receivers after their appointment, the amount due being determined by the contract price, and an order that they recover from the Central Railroad & Banking Company of Georgia and the Receivers of the same, such sums thus found to be due. No decree will be entered in favor of the intervenors for the payment of that portion of the coal which was used by the Charlotte, Columbia & Augusta Railroad Company.

"Reversed and remanded." (66 Fed., Rep. 805-7.)

This case was reported February 25th, 1895. It has not been criticized or questioned. It has been cited with implied approval. *Northern Pacific R. R. Co. vs. Lamont*, 69 Fed. Rep., 25.

BRIEF OF THE ARGUMENT.

Although the Court of Appeals did not put their decision on the contract, our first contention is that

I.

The Central was liable on the express contract; especially in view of the fact that the Receivers of the Central adopted the contract by continuing to accept and use a large number of carloads of coal shipped in pursuance of the contract, and also in view of the further fact that the Circuit Court confirmed this adoption of the contract by allowing to the Receivers the benefit of the reduced contract price at the mines, which was much less than the market value of the coal at the places of delivery.

(a.) The coal shipped in pursuance of the contract continued to arrive after the appointment of the Receivers, March 4, 1892. It is significant that the coal was so shipped that all which was in transit went into the possession of the Central's Receivers. As this coal continued to arrive during the months following their appointment, the Receivers were bound either to accept it and thereby adopt the contract or else to disaffirm the contract and reject the coal. They elected to do the former; accepted and used the coal; and thereby became liable under the contract, because they adopted it. *Sunflower Oil Co., vs. Wilson*, 142, U. S. 313-322; *Quincy, Missouri & Pacific Railroad Co., Humphreys* 145, U. S. 82.

(b) The contract price of the coal delivered to the Central was 90 cents per ton at the mines (p. 36.) The Sloss Company, by consent of both parties was to receive 95 cents per ton. This was lower than the market price at the time—the average market price being \$1.02 per ton. (Master's Report, p. 176.) The average value of the coal at the places delivered was \$2.50 per ton for the Sloss Company's coal, (Master's Report, p. 176), and \$2.74 for the Virginia Company's coal. (Master's Report, p. 65).

(c) If the contract was not the measure of the rights of the parties, it is obvious that the Intervenor was entitled to recover the market value of the coal at the places of delivery. An amendment duly verified was framed to meet this view of the case (p. 51.) No answer was filed to the amendment.

(d.) The grotesque inconsistency of the defense then became apparent. Counsel for the Central who had hitherto insisted that the whole transaction was with the Danville now contended for the benefit of the terms stipulated in the contract; and sought to show on cross-examination that the enhanced value of the coal at the places of delivery was due to the haul "over the Central's own lines." (p. 201.) But it was shown while this was true of the haul from Birmingham to the points of delivery on the Central, the haul from the mines to Birmingham was 25 cents per ton, and this haul was not over the Central lines, (p. 201.) These items must unquestionably have increased the liability of the Receivers for the coal they accepted and used, but for the fact that the Court which appointed them decreed them to pay the contract price, and thus sanctioned the Receivers' previous adoption of the contract.

The Receivers derived a large benefit under the terms of the contract. Of the Virginia Company's coal, they obtained for \$6,171.30 coal worth at the places of delivery \$18,661.89 (Master's Report, p. 65); and of the Sloss Company's coal, they obtained for \$776.00 coal worth \$2,032.56 (Master's Report, p. 176.)

(e) The foregoing applies with equal force to the large amount of coal on the bins at the time of the appointment of the Receivers.

"The Master's Report finds that coal of the Virginia Company worth * * * \$6,700.50, was on the bins at the time of the appointment of the Receiver: * * * and that of the coal of the Sloss Company * * * coal worth \$3,818.00 was on the bins March 4, 1892." (See decision Circuit Court of Appeals).

The above amount of coal of the Virginia Company on the bins was worth, in market value at the place of delivery, \$2.74 per ton, or \$20,399.30. (Master's Report 65). The Sloss Company's coal on the bins was worth \$10,045.00. (Master's Report p. 176).

(f) The market value of the coal used by the Receivers, including that on the bins and that received by them after their appointment, exceeded the entire debt of the Intervenor under the contract; hence it was obviously to the interest of the trust in the hands of the Court to adopt the contract.

This appears from the following statement :

VIRGINIA COMPANY'S COAL.

Market value coal on bins.....	\$20,399.30
Market value coal received by Receivers.....	18,661.89

SLOSS COMPANY'S COAL.

Market value coal on bins.....	10,045.00
Market value coal received by Receivers.....	2,032.56

Total value.....	\$51,138.75
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Virginia Company's entire debt, contract price.....	\$26,607.44
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Sloss Company's entire debt, con- tract price.....	14,359.38
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Total debt.....	\$40,966.82
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Amount saved by adoption of contract, (assuming that Central pays entire debt).....	\$10,171.93
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(g) The adoption of the contract in part necessarily implied the adoption of the whole. The contract was not divisible. "They could not accept what was beneficial and avoid what was burdensome." *Rader's Administrator vs. Maddox*, 150, U. S. 128, 131.

II.

The Central was liable, under the original contract made specifically in its name, and on its behalf by agents in possession of its property and franchises, for supplies necessary to enable it to perform its charter obligations.

(a) The written contract expressly binds the Central. (p. 36). It provides that the Virginia Company is to "furnish coal to the Central Railroad & Banking Company of Georgia" for the succeeding twelve months, and that "the Central Railroad & Banking Company reserves the right to increase or decrease the monthly deliveries." There is nothing upon the face of the contract to show any connection with the Danville, except the unimportant fact that the contract was written upon a letter-sheet having the name of the latter corporation at the top.

Contracts made with one corporation are not presumed to have been made with another. *Coggins vs. the Central Railroad Company*, 62 Ga. 685.

(b) The testimony of J. R. Ryan and Thomas Seddon, quoted in the statement of the case, shows that the contract was explicitly with the Central and explicitly not with the Danville. The Master so finds under the evidence. (p. 62. par. 6).

(c) The delivery of the coal was made to the Central, specifically, in pursuance of the contract. Such is the admitted fact.

"It is agreed that the coal described in the exhibit to the intervention by amounts and dates of shipment was delivered by the intervenor to the (railroad lines of the) Central Railroad & Banking Company of Georgia, which was being operated by the Richmond & Danville Railroad Company till the 4th of March last, at the dates and in the amounts shown in said exhibits." (p. 61).

(d) If it were true that Ryan's motive in making the contract with the Central was to evade the agreement that bound

him not to sell to the Danville, that motive would not affect the contract actually made. The Central cannot defend against liability for supplies actually used in operating its lines on the ground that the agreement or combination made the contract unlawful.

In fact, the result of the combination was highly beneficial to the Central in that it secured coal at a lower rate than it had ever done under free competition. It is true that under the combination the price of coal was advanced to the Richmond & Danville up to one dollar and twelve (\$1.12) per ton, but the Central got coal from the Virginia Company at 90 cents per ton. (pages 104, 204.)

(c.) The Central having put in possession of its property agents who assumed to act for it—having thus put it in the power of these agents to induce others to contract with them—“having permitted the lessees to conduct the business of the road in this particular, as if there were no change of possession—is not in a position to raise any question as to its liability for their acts.”

In the case of *Railroad Company vs. Brown*, 84 U. S. 446, the lessor company was held liable to a passenger who held a ticket issued by the lessee in the name of the lessor company.

The Court said :

“The road was run on the joint account of the lessees and receiver, and the servants employed and controlled by them jointly. Both were, therefore, alike responsible for the act complained of, and if so, the original company is also responsible, for the servants under such an employment, in legal contemplation, are as much servants of the company as of the lessees and receiver.

“Apart from this view of the subject, the ticket on which the plaintiff rode, was issued in the name of the Washington, Georgetown & Alexandria Railroad Company, as were all the tickets sold at both ends of the route. The holder of such ticket contracts for carriage with the company, not with the lessees and receiver. Indeed, there is nothing to show that

Catherine Brown knew of any of the difficulties into which the original company had fallen, nor of the part performed by the lessees and receiver in operating the road. She was not required to look beyond the ticket, which conveyed the information that this railroad was run as railroads generally are, by a chartered company. Besides, the company having permitted the lessees and receiver to conduct the business of the road in this particular, as if there was no change of possession, is not in a position to raise any question as to its liability for their acts." (p. 451).

(f.) The equity of the supply creditors, if loss must ensue to them or to stockholders and bondholders, is superior to that of the latter two classes.

The stockholders by the act of the majority and the acquiescence of the minority were responsible for the lease. The fact that it came to an end immediately upon the complaint of a single stockholder (p. 2, par. 4), shows that during its continuance the stockholders assented to the lease.

It requires no authority to show that as against them, the equity of the supply creditor must prevail. If Minitree was a wrong-doer in making the contract, they put him in the position to do the wrong. They cannot take advantage of their own wrong when sued by a party who supplied the corporation with means to fulfil its charter obligations. *Calais Steamboat Co. vs. VanPelt, administrator*, 67 U. S., 572.

The bondholders might have assailed this lease which was so indefensible that when the Receiver was applied for, its lawfulness was not even asserted. (p. 3, par. 6.) But it is not necessary to discuss the equity of bondholders as if this were a case where there are two innocent parties and one must lose. The bondholders lost nothing. They got their interest in January, 1892, and they held their bonds with notice that the equity of *Fosdick vs. Schall* subjected their lien to the payment of the current supply indebtedness of the Central. The Danville did not allow any heavy debt for coal to accumulate; all the coal

sued for was supplied in less than six months before the Receivership. The Danville did not buy a general supply of coal and assume to distribute it among the numerous lines of its system. It secured a rate greatly below the market price by making a special contract for the Central's supply exclusively. If the Central's officers had been directly in charge of its property, they could have done no better in its behalf. The bondholders, therefore, suffer no loss. The coal debt is one which would have existed and must have been paid in any event.

III.

Irrespective of the special contract, the Central was liable for the coal specifically supplied to and used upon its lines; and where the Danville diverted the revenues of the Central to pay the interest on the Central's bonds two months before the receivership, and where the receivers used the revenues of the Central in betterments, the coal companies are entitled to the restoration of the amount necessary to pay their debt.

To this effect is the decision of the Circuit Court of Appeals.

In their petition for certiorari, the petitioners stated the decision of the Circuit Court of Appeals as follows: (Petition p. 4).

"It is now for the first time laid down as a rule that when a railroad company leases its road to another company, it does so with the understanding that upon the abrogation or termination of the lease, the entire supply indebtedness and operation expenses of the lessee company which it may, through accident or design, leave unpaid becomes a charge and lien upon the property of the lessor company."

We respectfully submit that this is a perversion of the ruling made by the Circuit Court of Appeals.

That ruling cannot properly be interpreted except in connection with the facts of the case. The above statement leaves out of sight three important elements of the decision.

(a) Although the Court did not rest the case on the fact that the contract for the coal was made with the Central, the Court does call attention to the agreed fact that the *delivery* of the

coal was *to* the lines of the Central, and was 'furnished and used in their operation,' and the Court finds as a fact that '*the coal was purchased in the name of the Central Railroad.*'

(b) "It appears that there was a diversion of the income for the payment of the interest on the bonds of the Central Railroad, in January, 1892, some two months before the Receivers were appointed."

(c) "It also appears that the Receivers expended from the income for improvements on the railroad property a sum much larger than the claim of the intervenors."

It cannot be fairly claimed that the Circuit Court of Appeals has laid down a rule that is not limited by the facts in the case upon which the decision rests. So construed, the decision does not warrant the petitioners' representation of its legal intentment, but may be stated in the form of a syllabus, as follows :

"Where it appears that one railroad was operating another under color of a lease and that the coal used in running the engines of the lessor company was (not furnished to the lessee company as part of the coal used in operating its system of railroads but) furnished and delivered specifically to the lines of the lessor company ; and where the lessee company diverted the income of the lessor company from the payment for such coal to the payment of the interest on the lessor company's bonds ; and where shortly after such payment, a Receiver of the lessor company was appointed at the instance of a stockholder assailing the lease (neither the lessee nor lessor asserting its validity), which Receivership was extended to bills filed by the lessor company for liquidation and by the mortgage creditor for foreclosure ; and where it was made to appear that a large part of such coal was on the bins of the lessor company when the Receiver took charge and that he used the same—that some of it was in transit and was received and used by the Receiver and for which the Receiver was decreed by the Court to pay only the contract price—that the remainder had been delivered to the lessor company only a few months prior to the appointment of the Receiver ; and where it further appears that the Receiver had used for betterments on the railroad property a portion of the income greatly in excess of the claims of the creditors who supplied such coal ; *Held*, that the entire claim for such coal is a preferential debt."

This case is one of peculiar and exceptional facts. It does not call for any general application of *Fosdick vs. Schall* to

leased railroads. All the circumstances of the transaction are out of the usual order. (a) Ordinarily, the lessee or operating railroad would purchase in its own name supplies for its leased lines, and distribute the same among the leased lines. (b) Ordinarily, the lessor and lessee in contemplation of the termination of the lease by lapse of time or agreement, would adjust the question of liability for supply debts. Here, there was an instantaneous surrender of the property by the pretended lessee.

Is it, in fact, a case of lease? The pretended lessee here was the Georgia Pacific Railroad Company which was at the time of the pretended lease already itself leased to the Danville, and which without a syllable of writing, turned over the possession of all the property of the Central to the Danville. The latter certainly cannot be said to have been the lessee of the property, in the ordinary sense. Although there was no final decree in the case of *Mrs. Clarke* against the Central in respect to the validity of the lease to the Georgia Pacific and the holding by the Danville, yet the Circuit Court by whom the Receivers were appointed refers in the decision hereafter quoted to the possession of the Danville as being that of a trespasser and usurper.

If, however, the Court admits that the case calls for the application of the rule in *Fosdick vs. Schall* to the case of leased railroads, the question arises what becomes of the equity declared in *Fosdick vs. Schall* in the case of a lease of one railroad to another.

This equitable rule with the limitations and restrictions placed upon it by later decisions is valuable and salutary; and certainly the equity cannot be defeated or destroyed by the contrivance of a lease.

If the doctrine were announced that bondholders could shield themselves from the equity of *Fosdick vs. Schall* by leasing the railroad upon which their bonds are issued to some other railroad, there would probably be a general resort to the scheme of

leasing in order to defeat this equity ; and inasmuch as such doctrine would place the liability on the lessee alone, it is likely that some railroad which was insolvent, or as nearly so as possible, would be selected as the lessee or scape-goat upon which to load the supply indebtedness.

The railroad systems of the present day generally consist of a main stem and collateral leased lines. Ordinarily, the purchases for supplies would be in the name of the main stem, and these supplies would be distributed among the leased lines. Can it be asserted that in such case the main stem should be made exclusively liable for the entire aggregate of all supplies used by the system?

In the case of *Kneeland vs. Bass Foundry and Machine Works*, 140 U. S. 592, there is a strong intimation that each division in a system of railroads would be held responsible for the supply debts used thereon. It is true that in that case the general indebtedness fell upon the main stem, but this was only because there was a failure to show what liabilities belonged to the particular divisions. In the case at bar there is no difficulty on this subject, because the coal was bought for, delivered to and used upon the Central division.

In the case of *Kneeland*, *supra*, (page of decision, 597-598), this Court said :

“ Another objection to the claim herein is, that, even admitting that it should be paid out of the fund arising from the sale of the road, it should not be entitled to payment out of the fund arising from the sale of the main line of the road alone, but should be distributed ratably among the several divisions of the entire systems of roads, according to a basis adopted by Special Master J. D. Cox, in 1884, with respect to the general liabilities of the entire system of roads under control of the several Receivers.

“ It is quite true that the several Receivers had control of and operated the entire system of roads, and that these supplies were furnished them while they were thus in control of the

roads ; but there is nothing in the record going to show specifically by what division of the road these supplies were used. Indeed, if any presumptions are to be indulged, it may justly be presumed that they were all used on the main line of the road from Toledo to East St. Louis. For the Court below being familiar with the basis of distribution of liabilities before referred to, and it not appearing anywhere in the record that they were not used on that division of the road it must, of necessity, be presumed that the order made by the Court, that they be paid for out of this fund was in accordance with the law and the facts of the case."

The administration by the Court of the Wabash System, as appears from the cases of *Quincy Company vs. Humphreys*, 145 U. S. 82, and *United States Trust Company vs. Wabash Railway Company*, 150 U. S. 287, shows that the Court recognized the Wabash System as composed of separate divisions, and directed the accounts to be so kept as to throw upon each division its respective liabilities, and only to permit payment upon its bonds when the income exceeded expenses. See also *Compton vs. Jesup*, 167 U. S. 1.

In this case the Circuit Court of Appeals rested the liability of the Central upon the true ground, to-wit, that the supply creditors were "entitled to have the income of the receivership used in the payment of (their debts), as the railroad company would have been bound in equity and good conscience to use it, if no change in the possession of the property had been made."

Counsel for the Central do not claim that the supply creditors are not entitled to the equity declared in *Fosdick vs. Schall* ; but they assert that such equity exists only in this case against the Danville ; but with what color of justice or equity could these intervenors seek to charge the income and corpus of the Danville with the payment of their debts? To such an attempt, would it not be a complete reply to say that the Danville did not in any way whatever get the benefit of the consideration of the indebtedness ; that the bonds upon which indebtedness was paid out of the income derived from the operation of the

Central on January 1st, 1892, were not the bonds of the Danville but of the Central; and that the receiver who took the unconsumed coal on the bins at the time of the receivership and continued to accept it after the receivership was the receiver of the Central.

In point of fact, we are informed that certain supply creditors who had claims against the Danville incurred by reason of its operation of the Central endeavored to assert the equity of Fosdick against Schall in the Circuit Court at Richmond in case of Clyde and others against the Danville, and that it was held by the Circuit Court that such claims were not preferential debts as against the income or corpus of the Danville.

Even if there had been in this case a valid lease of the Central to the Danville, it is settled law that the lease of one railroad to another does not affect any of the obligations which the lessor company owes to the public; and one of these obligations is to continue the exercise of its franchises: *N. Y. & C. R. R. Company, vs. Winans*, 17 How. 30.

In *Harmon vs. the Columbia R. R. Company*, (So. Ca.), 5 S. E. R. 835, the Court says: "We find it laid down by Mr. Justice Davis, in the case of *Railroad Company vs. Brown*, 17 Wall 450, as 'the accepted doctrine in this country that a railroad corporation cannot escape the performance of any duty or obligation, imposed by its charter or the general laws of the State, by a voluntary surrender of its road into the hands of lessees.' This doctrine was recognized and affirmed by this Court, in *Bank vs. Railway Company*, 25 S. C. 222, although the court in that case, not because any doubt was entertained as to the soundness of the doctrine just laid down, did state, merely as an additional reason for the conclusion there reached, that the contract there was made with the lessor and not with the lessee."

In this case the implied agency of the Danville to bind the Central for debts necessarily incurred in performing the charter

obligations of the Central to maintain its operations is stronger, we submit, by reason of the fact that the Central had turned over its entire property and management, not to a lessee, but to the Danville without authority under color of a lease to one of its own leased lines.

In the case of the *Macon Foundry and Machine Works vs. The Central*, the plaintiffs intervened for the recovery of a debt for repairs upon the locomotives of the Central, which repairs they were engaged to make by the agents of the Danville. There was no claim, as here, that the contract was made on behalf of the Central.

In this case the Court said : (Opinion by Judge Speer).

"The Central Railroad & Banking Company deliberately through the action of its Board of Directors, transferred its entire property to the Georgia Pacific Railroad Company, an insolvent corporation, in absolute violation of the law, and instantly, without a syllable of writing, turned over the entire property, not to the Georgia Pacific, but to the Richmond & Danville Railroad, which then operated it, collected all of its revenue and diverted the income in that way from the proper channel, and therefore held this property in contemplation of law as a trespasser. Now, the Central Railroad did that.

"The State had a right to expect, as I have said, that it would keep its property going as a great system of transportation, as was originally designed. The parties who took the property found it necessary, of course, to carry on the business of railroad transportation. In order to do that, they found it necessary to keep up the material equipment of the road. It was the duty of the defendant company to carry on the business; and if it selected, lawfully or otherwise, an agent to carry on the business for it, it is none the less responsible for the debt thus created, and it cannot primarily shift the obligation on the Richmond & Danville Railroad Company. The State had the right to expect when it chartered the Central Railroad, that it would perform its duties to the public, and one of these duties was the payment of debts due and contracted for the purpose of carrying on its business as a transportation company."

(This case has not been reported, but the foregoing extract is copied from the opinion, of which a certified copy is filed with this brief in the office of the Clerk of this Court.)

The authority of an illegal lessee as the agent of the lessor has been expressly upheld in the case of *Ottawa, Oswego & Fox River Valley Railroad Company vs. Black*, ⁷⁹~~77~~ Illinois, 262, in which the head-note is as follows, the head-note being the same as the language of the decision, on page 267 :

" If a Railroad Company, without any authority to do so, leases its road to another company, the lessee will only be regarded as the servant of the company owning the road, and such company will not be by the act of leasing discharged from its contracts or released from any of its liabilities." To the same effect is the case of *Hays* against the same railroad. *61 Illinois*, 123.

IV.

The equity of the supply creditors was complete, because the income from the Central was diverted to the payment of interest on the Central's bonds two months prior to the Receivership, and to permanent improvements during the Receivership.

The income of the Central was diverted to the payment of interest on bonds of the Central prior to the Receivership during the time that the coal was being delivered ; and after the Receivership a larger amount than the Intervenor's debts was used in making improvements upon the Central's lines.

To this effect is the agreed statement of facts. (Record page 15, clauses 14 and 15.)

In the case of *Burnham vs. Bowen*, III U. S., 776, the Court held even in a case where there had been no division by the company or by the Receiver of the current earnings for the payment of interest on bonds, a debt incurred over eleven months before the appointment of the Receiver, for coal used in the company's locomotives, should be paid out of the income of the Receiver upon the ground that it was such a debt as it would have

been the company's duty to pay out of the net earnings if Receiver had not been appointed.

It is not necessary to our case to contend that ~~division~~^{div}ision of income is not indispensable to create the equity ; but there is authority to this effect. *Farmer's Loan & Trust Co. vs. Kansas City, W. & N. W. R. Co.*, 53 Fed., Rep. 182-189; *Finance Co. vs. Charleston, C. & C. R. Co.*, 10, C. C. A. 323, 62 Fed., Rep. 205; *Thompson on Corporations*, Sec. 7118, p. 5643.

The cases are not harmonious on this point ; but an eminent-judge has recently suggested a line of reconciliation. In the case of *Atlanta Trust Co. vs. Woodbridge Canal & Irrigation Co.*, 79 Fed., Rep. 39-41, a distinction is made between the claims for labor expended in repairs and improvements in respect to which it is said they are entitled to preference only where there has been a ~~division~~^{div}ision of income to pay interest, but that claims for labor and supplies necessary to keep the property a going concern will be given given preference even out of the *corpus* of the property, though there has been no diversion of income. The decision was by Judge McKenna, citing opinion of Chief Justice Fuller in *Finance Co. of Pennsylvania vs. Charleston C. & C. R. Co.*, 62 Fed., Rep. 205; 10 C. C. A., 323.

This debt for coal is of the most favored class.

Even if there had been no diversion of income for the payment of interest on bonds ; it would be enough that the income had been diverted for the payment of improvements on the railroad property.

" Persons who furnish labor, supplies and materials to a railroad, in order to keep it a going concern, are entitled to payment out of earnings thereof before the payment of any interest on the mortgage bonds ; and if, in a suit to foreclose, it appears that money due upon claims of this nature has been paid out as interest on the bonds, or *permanent improvements*, whereby the bondholders have been benefited, the Court will order an amount equal to the sum so diverted to be paid upon such claims out of

any earnings in the hands of the Receiver, or, failing these, out of the proceeds of the sale."

Financé Co. of Pennsylvania vs. Charleston C. & C. R. R. Co., 48 Fed. Rep., 188.

See, also, *Southern Railway Co. vs. Carnegie Steel Co.*, 76 Fed. Rep., 492, 498. *Ib. vs. Tillet*, 76 Fed. Rep., 507.

V.

CASES CITED BY PETITIONER REVIEWED.

1. The cases of *Quincy Company vs. Humphreys*, 145 U. S., 82, and *U. S. Trust Company vs. Wabash Ry.*, 150 U. S., 287, involve only the question of the adoption of an existing lease by reason of the retention of possession of the leased railroad by a Receiver. If they have any bearing, it is adverse to the petitioner.

(a) The Court recognized the separate divisions of the Wabash system and directed the accounts to be so kept as to throw upon each division its respective liabilities, and only to permit payment upon its bonds when income exceeded expenses.

If in that case a supply creditor had asserted an equity against a single division for supplies furnished to and used by it exclusively, it would have been in accord with the entire theory of the Court's administration to have decreed that payment thereof be made by that division.

(b) The Court ordered the entire amount of preferential debts existing at the time of the receivership paid in preference to the mortgage.

(c) "The immense debt for supplies and other preferential claims here precludes the inference that there was any such diversion of earnings applicable to the payment of rentals." 145 U. S., 103.

Here the Circuit Court of Appeals finds as a fact that diversion was made of earnings applicable to the payment of these supply debts.

2. The case of *Transportation Co. vs. Pullman Co.*, 139 U. S., 24, does not sustain the point on which it is cited, and is wholly without application. The true rule is laid down in *Ottawa Co. vs. Black*, 97 Ill., 262, *supra*.

3. Petitioner also relies upon the case of *Clyde against the Richmond & Danville Railroad Company*, 56 Fed. Rep. p. 540. On examining this case, it will be seen to have no application. The *ratio decidendi* of that case is embraced in the following statements :

1st. In that case the intervenor had sued the Richmond & Danville Company *alone*, and had elected that Company as her debtor, and had merged her claim in a judgment against that Company. (See *page of Decision*, 542.) The case here is wholly different.

2d. No question could be made in that case as to the obligation of the Railroad Company to which the supplies were furnished, for the reason that that railroad was not a party to the case before the Court (which is not true here, because the Central, which is the railroad for which the supplies were furnished, is a party to this case) ; and also because in the Clyde case the mortgagees were not parties to the suit. That is not true here, because the mortgagees are parties and have filed their bill in this case as dependent upon the original Rowena M. Clarke bill, and in their dependent bill asked the Court to continue the same receivership, which was done, and which case has been consolidated by order of the Court with the other cases in which the interventions were filed ; and their counsel unite in the agreed statement of facts on which the case is heard. (*Record*, p. 15.)

VI.

The equity of the supply creditor is aided by the local law of Georgia.

(a) The act of the General Assembly of 1876, (Session Laws p. 122), embodied in the Code of Georgia, Section 2333 is as follows :

"An Act to define the duties and fix the liability of Receivers appointed for Railroad Companies, in certain cases, and to create liens in favor of certain creditors, and provide for the enforcement of such liens, and for other purposes.

"SECTION 1. *Be it further enacted, etc.,* That in all cases where the business of any corporation operating a railroad either wholly or partially in this State, shall by an order or decree of any Court, be placed in the hands of a receiver for the benefit of the creditors or stockholders of said corporation, it shall be the duty of said receiver to apply the income of said railroad to the payment of the incidental expenses necessary to the carrying on said business, which shall include the wages of employees, wood, cross-ties and other material furnished, and which may be necessary for conducting said business and keeping the property in repair, and the damages which may arise from the loss or injury to goods, wares and merchandise received by said road for transportation, and for injuries to persons and property caused by the running of the cars on said road, and for which said road is now liable, as common carriers, by the laws of this State, and a lien is hereby created on the gross income of said road, while in the hands of such receiver, in favor of such creditors or claimants, superior to all other liens under the law of this State.

"SEC. 2. *Be it further enacted,* That if said receiver should be removed, or a vacancy occur in said office, and a successor be appointed, it shall be his duty to pay the liens herein provided for according to their date, out of any funds in his hands as such receiver, whether such liability accrued before or after his appointment."

This Statute has been construed by the Circuit Court to apply to "incidental expenses necessary to the carrying on said business," *contracted prior to the appointment of the Receiver.*

In our brief in the Circuit Court of Appeals (page 23) we said :

"Although the decisions are not reported, yet, inasmuch as they are known to opposing counsel in this case, it is permissible to state that the court below has construed this Georgia statute to refer to the payment of current debts for supplies, etc., contracted prior to the appointment of the receiver; and in pursuance of that construction the court has given judgment against the Central and its Receivers for wood and other materials furnished to the Richmond & Danville while it was operating

the Central, and which the Danville used in the operation of the Central. It is also proper to state that the court below distinguished his ruling in such cases from the decision which is the subject of the present appeal ; though we are wholly unable to see the distinction."

Counsel for Appellees (the petitioners here) replied to the brief, but took no issue with the statement of fact above made.

Shortly prior to the enactment of this Statute, the Supreme Court of Georgia decided in *Henderson vs. Walker*, 55 Ga. 481, *Thurman vs. Cherokee R. R.*, 56 Ga. 376. that a Receiver of a railroad was not liable to an employee for injury caused by negligence of a co-employee: (as railroads are liable in Georgia); and it was contended in the Circuit Court of Appeals by the appellees, (petitioners here) that the act of 1876 should be construed as intended to remedy the "evil" in that decision and others analogous to it ; and that it was limited to liabilities arising during the Receivership.

This argument is completely met by a more recent decision of the Georgia Supreme Court in *Patterson vs. Central R. R. & B. Company* 97 Ga. 152, holding that the Act of 1876, did not affect the former cases in any manner.

The foregoing Statute is therefore to be regarded as a statutory adoption of the equity principle in *Fosdick vs. Schall*. In two respects, the Statute is more favorable to creditors than the equity rule has been declared to be in some cases: It places the rights of creditors upon the same footing whether the Receivership is for the benefit of the creditors or *stockholders* of the corporation. Under this Statute, therefore, the right of Intervenor to the judgment they sought, was independent of the Trustee of the bondholders becoming a party to the litigation and independent of the diversion of income. It is unnecessary, however, to insist upon this point, because both of the conditions referred to are present in this case.

(b) The Supreme Court of Georgia have gone to greater length than any other Court in favor of general creditors as

against mortgage creditors of insolvent railroads. In the case of *Green vs. Coast Line Ry. Company et al.*, 97 Ga., 15, the Georgia Court holds :

" Mortgages upon a railway and the income from the same, the mortgagor being left in possession, are, as to the income, whether produced before or after the appointment of a receiver in foreclosure proceedings, subject to be postponed in equity in favor of a claim for damages resulting from a *tort* committed by the mortgagor while and by reason of operating the railway after the execution of the mortgage."

This decision rests in part upon the statutes of Georgia, cited by the Court, page 24 ; and in part upon the principle which is stated in unique form on page 31 :

" Benefit and burden are correlatives, and he who would appropriate all a debtor has, must adopt such of his burdens as are fundamental to his debtor's rights to have existence and create any debt or incur any obligation whatsoever."

VII.

The evidence shows that the Central received the benefit of all coal shipped under the contract, by using the same upon lines which it either owned or controlled, except a small amount used by the Charlotte, Columbia and Augusta Road.

The Master found in his original report that all of the coal was used for the benefit of the Central ; but modified his finding in a supplemental report, in which he reduced his original finding by deducting therefrom certain coal which was taken from the bins of the Central at Augusta, and used by three railroads—the Port Royal & Augusta, the Port Royal & Western North Carolina, and the Charlotte, Columbia & Augusta.

(a) At the beginning of the case the following agreement of counsel was made :

" It is agreed that the coal described in the exhibit to the intervention by amounts and dates of shipment was delivered by the Intervenor to the (railroad lines of the) Central Railroad &

Banking Company of Georgia, which was being operated by the Richmond & Danville Railroad Company, till the 4th of March last, at the dates and in the amounts shown by the exhibits.

"This agreement is made with the reservation of the right to show and to prove any error in said exhibits should it hereafter be discovered."

This agreement was signed by Lawton & Cunningham for the Central, and Henry Jackson for the Danville, (page 61).

There never was any attempt afterwards made in pursuance of this reservation to prove any error in the exhibits as to the delivery of the coal along the lines of the Central, except as to trifling amounts. So far as concerns the coal that was used at Augusta by the three railroads above mentioned, that was properly delivered, because Augusta was the headquarters of Division Superintendent Epperson, to whom coal was consigned under the contract; and, therefore, the remark of the Circuit Court (page 232) that some of the coal was shipped to points with which the Central had no concern, and shipped direct to various agencies of the Danville, is contrary to the solemn agreement of counsel for the Central, that all the coal was delivered to the railroad lines of the Central Railroad & Banking Company of Georgia. We respectfully submit that on questions of fact the case must abide by the agreements of counsel as to the truth of the case.

(b) The Master's report, in his seventh and eighth findings (pages 62 and 175), finds that the coal was delivered in pursuance of the contract and within its terms along the lines of the Central Railroad & Banking Company of Georgia.

(c) The report of the experts who represented the Intervenor and the Danville, and who testified that at each point which they visited they were assisted by the local agent whom the Central designated to assist them in making up their reports, shows that the coal (with exceptions which are trifling in quantity) was delivered along the lines of the Central Railroad & Banking Company.

(d) It was not even claimed by the Counsel for the Central in the exceptions which they filed to the Master's report, that any relatively large amount of this coal was diverted from the Central's lines. We omit for the present the question as to the liability for the coal taken at Augusta by the three railroads above mentioned, and refer to the exceptions filed by Counsel for the Central to the report in the Virginia case. (See item headed Recapitulation, on page 82, where it is claimed that 448 tons of coal was delivered to "miscellaneous corporations.") These miscellaneous corporations are shown on page 82. One of them, for instance, is the Crystal Ice Company. This is a corporation (see page 15) located at Columbus, Ga., which is one of the principal points of the Central lines; and the only legitimate inference to be drawn is that the officers operating the Central sold a small amount of coal to this Ice Company and doubtless received the money for it. The exceptions of Counsel for the Central to the report of the Master in the Sloss case (see Recapitulation, page 190) claim that of the Sloss coal twenty-nine tons were delivered to the Georgia Southern & Florida Railroad. This railroad has headquarters at Macon, one of the principal points on the Central lines, and the only legitimate conclusion from the evidence, is that this was a small temporary loan of coal by the Central to the Georgia Southern, which was either paid for or perhaps off-set by some temporary loan which the Central may have made from that railroad. It is a well known fact that Railroad Companies sometimes accommodate each other in small and temporary transactions of this kind.

The same remark applies to the small amount of twenty-five tons delivered to the Georgia Midland Railroad (page 84.) This railroad runs from Griffin to Columbus. Both of these points are on the lines of the Central, and this trifling transaction represents either the sale or the loan of twenty-five tons.

The exceptions quoted further claim that of the Virginia Company's coal 419 tons are "unaccounted for," and of the Sloss Company's coal 158 tons are "unaccounted for;" but

this is explained by the experts, who say (see testimony quoted, page 83) that this coal was probably carried on work trains; and hence no record of unloading was kept. But it must be remembered that the Central's Counsel had agreed to the fact as true that the coal was delivered along the Central lines, and thus assumed the onus of showing any exception to that rule; and any deficiency or failure of proof, leaving any coal "unaccounted for," operates against the Central.

Hence, we say that except with reference to the coal used at Augusta, there is not the slightest evidence in the record to show that any except the Central Railroad obtained the benefit of the coal shipped by the Intervenor. The fact that a large amount of coal belonging to these Intervenor was found on the Central bins by the experts, and the fact that the cars which had been started from the mines prior to the 4th of March, 1892, were taken possession of when they arrived by the agents of the Central's Receivers, shows conclusively that the coal was so shipped as to reach the proper bins on the Central.

It only remains to consider the liability of the Central for the coal, which was used at Augusta by the three railroad companies above mentioned.

1st. As to the Port Royal & Augusta and the Port Royal & Western Carolina, which will be considered together because they stand precisely on the same footing:

(a) The lease shows that the stock of these two railroads was transferred by the Central to the lessee (see pages 18-19.) The Central filed its dependent bill in which it alleged that it controlled these railroads, and that they were a part of its system, and these railroads filed answers sworn to by their officers, in which they stated (pages 10-11) that they admitted that the Central was the owner of their stock and bonds, and that the Central operated these railroads as a part of its system.

The Receivership of the Central was extended over these two roads, and they were operated by the Receivers up to as

late as June 16th, 1893, at which time they were discharged by the order of Judge Pardee.

By this late date all the coal that had been shipped in pursuance of the contract, had been long ago consumed, and therefore the subsequent discharge of these railroads from the Receivership does not seem to be material.

We insist in view of the above evidence as to the relation of these two corporations to the Central that if the Central is bound under the contract, or under the rule in *Fosdick vs. Schall*, or under the Statute of Georgia, then it is just as much bound for the coal which was used upon these two dependent and controlled lines, as upon any other part of this system.

Apparently, the Circuit Court resolved this contention in our favor, for the opinion states, with reference to the coal received by the Receivers :

" It is true that some of this coal was delivered to the Port Royal & Augusta Railroad and the Port Royal & Western Carolina Railroad, and perhaps other railroads, but they were roads under the control of the Central, and were operated as a part of its system, and these roads have no doubt accounted to the Receivers for the coal which they received." (Page 234.)

As to the coal used by the Charlotte, Columbia & Augusta Railroad Company, the Central is, of course, liable, if we are right in the argument heretofore made, namely : that the Central was bound by the contract, either directly by its terms, or bound by it because made by the Richmond & Danville, or otherwise ; because if the contract was binding, then the Central is liable to the Intervenor, even though it may have sold a part of the coal to another railroad company. The Court will have no hesitation in reaching the conclusion that in parting with the coal the Central in some way received consideration for the same. The coal was either sold to the Charlotte, Columbia & Augusta, or it may have been loaned to them in conformity with the usage to which reference has already been made, and

any uncertainty as to the proof makes the Central liable, by virtue of the agreement of counsel as to the fact of delivery to the Central.

If, however, the Court should be of the opinion that, under the rule of Fosdick against Schall, the Central is only liable for that portion of the coal which used upon its own lines, then it is undoubtedly true that the supplemental report of the Master will be sustained to the extent of deducting from his original report the value of the two thousand, one hundred and twenty-four tons of coal which was used by the Charlotte, Columbia & Augusta Railroad, and we respectfully insist that this certainly is the only exception that can be made to the liability of the Central for the entire amount of the coal.

The liability of the Central for the coal used on the Savannah & Western Railroad is too plain for argument. This corporation was made a party at the hearing by amendment (p. 5), and its line was operated by the Central's Receiver from that date.

VIII.

If the contract is not the measure of the rights of both parties, then the Intervenor is entitled to recover from the Receivers the value of the coal on the bins and of that which arrived after the Receivership, to-wit, the full market value at the places of delivery.

If the preceding argument does not state the law of the case, Intervenor claims that, independent of the contract and because the contract is rejected as the basis of their rights, they have a claim arising on *quantum valebat* against the Receivers of the Central for the value of their coal on the bins March 4th, 1892, and that which they accepted upon arrival in car loads after that date.

The facts upon this branch of the case are set forth in the Statement. It is to be noted that the Receivers filed no answer to the verified amendment alleging that they took possession of

a large amount of Intervenor's coal which was unpaid for, nor to the petition alleging that their books, coal chute reports, etc., would show the amount of such coal. They contented themselves solely with a criticism upon the proof offered by Intervenor.

(a) The division or mutual quit-claim agreed upon by the coal companies (page 142) was the only possible method of proving. It was perfectly fair to the Receivers, because under no circumstances could they be charged with more than the amount of coal proved to be on the bins.

(b) The evidence was satisfactory to the Master. His finding upon questions of fact, is *prima facie*, correct.

(c) The evidence was satisfactory to the Circuit Court; this inference is inevitable from the fact that the Court, although rejecting the Intervenor's claim, does not proceed upon the ground of a want of proof.

(d) The Circuit Court of Appeals deals with the proof as satisfactory.

Replying to the contention that the lessee got possession at the time of the lease of an equivalent amount of coal, we submit:

(a) There was no evidence that the Central turned over any coal to the lessee except the recital in the lease that the lessee took in the Central as a running road. Intervenor proved specifically and positively the amount of coal on hand March 4, 1892. If the fact that the lessee at the time of the lease, June 1, 1891, got possession of the Central's coal then on hand, was a matter of defense, then it was incumbent on the Central to show how much coal was on hand June 1, 1891. This was not done, nor attempted. Ryan testified that he had been making very heavy shipments—more than average shipments—just prior to the Receivership, and that the Central had a large amount of coal on hand March 4, 1892. If the coal on hand June 1, 1891, was used by the Central as a set-off, the Central should have shown at least that it was an equal amount.

(b) The argument that the Receivership should restore the status of the parties at the time of the lease is really an argument for the Intervenor. For while the lessee took the lessor's supplies as a running road, the lessee also assumed and paid the current debts for supplies. (Lease, page 28). Complete adjustment of the relations of the parties requires that the Central, which took the supplies March 4, 1892, should pay the current debts for those supplies.

The true view, however, is that this matter is wholly one for accounting between the Central and Danville, and it cannot affect in any way the rights of the Intervenor.

The mode of arriving at the amount of the coal on the bins has been set forth in the statement of facts. Expert testimony shows it was the only method possible, and that it was fair and just. There is no evidence tending to show that in the 18,426 tons on the bins, there was any coal that had been paid for. Ryan testified that the Central usually kept on hand two or three weeks supply of coal (p. 97), so that the 18,426 tons on bins March 4, 1892, was coal that had been recently shipped, and which is represented by the later items in the account. The coal on hand, June 1, 1891, and the coal represented by the oldest items of the accounts of the coal companies had been consumed months before; and the supply renewed probably as often as ten times before the particular supply on hand March 4, 1892, was placed in the bins. The contract itself provides "settlements for the coal delivered in any one month, to be made on or about the first of the *second succeeding month*." So that there is no ground for the contention that any of the coal had been on hand long enough to be paid for.

The Receivers were liable for this coal as well as for that which arrived after March 4, 1892. Their liability for the latter is not denied.

If the contract be ignored, then the claim of intervenors for the coal on the bins is a charge for which the intervenors have

a lien under the Act of 1876, section 2333 of the Code of Georgia, *antea*, according to the narrow construction of that statute, insisted upon by counsel for the Central; and since the claim rests on *quantum valebat*, it is a debt for the coal at its market value at the places of delivery.

When this question is raised, the logic of the counsel for the Central takes a complete somersault. Throughout the whole discussion, their argument ceaselessly reiterates Danville, *Danville*, DANVILLE. But when the intervenors assume that the contract is not in the case, and therefore charge the Central with the proven market value of the coal at the places of delivery, our opponents throw off the Danville cloak and in all the nakedness of truth exclaim, "We, *the Central*, hauled the coal, earned the freight which gave to the coal its enhanced value, and therefore, *we*, the Central, claim the benefit of the contract price."

If the intervenors can recover the market value at the places of delivery of the coal on the bins and that received after March 4, 1892, they will not insist upon their claim for the coal consumed prior to the Receivership. It is only by adopting and claiming under the contract that the Receivers escape an increased liability.

Walter B. Hill
for Appellant



No. 100.

Sup. Ct. of Ky. of Kepp & Harris for Appr.
100

THE VIRGINIA AND ALABAMA COAL COMPANY

Filed Dec. 9, 1897.

THE CENTRAL RAILROAD AND BANKING
COMPANY.

SUPPLEMENTAL BRIEF FOR APPELLANT.

I.

The order appointing receivers of the Central provided for the payment of the debts of this class.

A temporary receiver was appointed on March 4, 1892, and the hearing was had before Judges Pardee and Speer on March 28, 1892, at which time the court passed the following order:

"E. P. Alexander, heretofore appointed temporary receiver of this court, shall immediately turn over to the receivers hereby appointed all and singular the assets of the Central Railroad and Banking Company of Georgia in his hands, and all obligations and liabilities, whether arising *ex contractu* or *ex delicto*, which may have been incurred by him in the administration of the trust confided to him in this cause, and all accounts for current expenses due by the said Central Railroad and Banking Company of Georgia, including claims for personal injury and freight claims, and all such other accounts and claims as are usually settled from day to day in the ordinary course of business shall be assumed and discharged in the regular course by the receivers hereby appointed." (Record, p. 7.)

Petitioner's counsel state (Brief, p. 31) that "the court did not pass any order at the inception of the receivership for the payment of creditors of this class."

The Central had been operated by the Danville since June, 1891, and the foregoing order would be without meaning unless it referred to the current debts due by the Central arising under that operation.

II.

Appellants' pleadings and the prayers thereof adequately present their claim as supply creditors for coal delivered and consumed prior to the receivership.

The receivers, as well as the railroad companies, were made parties to both interventions.

The Virginia Company's prayer is "that the court decree that said defendants are, jointly and severally, liable to intervenor for said sum of \$26,607.44, and that they *be decreed to pay said sum*, besides interest, to intervenor," and for "such other and further relief as the nature of the case may require" (p. 35). The prayers cannot properly be limited to the railroad companies, because on that construction there would have been no object in making the receivers parties.

It was not necessary to set out the proposition of law that the supply creditor was entitled to a preference. It was sufficient to allege facts bringing the claim within the equity

rule and the order of the court directing payment. The petitions, with the exhibits, certainly do this.

In *Wood vs. New York & N. E. R. Co.*, 70 *Fed. Rep.*, 741-746, it was held sufficient to allege "that said supplies were necessary to the operation, from day to day, of said railroad." In the Virginia Company's petition the allegation is, "Said coal was bought and actually used for the benefit of the Central Railroad Company in the operation of its machinery and the prosecution of its business" (p. 34). In the Sloss Company's petition it is alleged "the coal was purchased for its (the Central's) use and actually used by it in the necessary operation of said road and in the exercise of the obligations and duties to the public imposed upon it by its charter and by the law" (p. 153).

In *Finance Co. vs. Charleston, C. & C. R. Co.*, 62 *F. R.*, 205-209; 10 *C. C. A.*, 323, the court say :

"The petition was sufficient and the relief awarded, being consistent with the case made, was *grantable under the prayer of general relief*."

The prayer that the receivers pay for the coal on the bins as an *operating expense* of the receivership and have priority as such did not waive or affect the right of the supply creditor to payment for the other portion of the claim under the equity rule or the order of the court.

The contention that the prayers are inadequate was not made in the circuit court. If intended to be urged it should have been made in that court, where, if necessary, an amendment would have been allowable. (*Neales vs. Neales*, 9 *Wall.*, 1.)

"The substance of right is more important than the science of statement."

III.

The evidence that the contract was made specifically in the name and on behalf of the Central was admitted without objection.

See Ryan's testimony, page 94 *et seq.* As the defendants in the court below did not urge the objection of variance, the allegation in the pleading does not control the question; but the decree in case should be based upon all the facts, as they are before the court without objection.

IV.

The trustee of the mortgage creditor was made a party at an early stage of the cause, and consented to the receivership.

It is true, as stated in the brief for petitioners, that the foreclosure suit was begun by the trustee January 23, 1893; but the trustee appeared by counsel on July 1, 1892, and "assented to the continuance of the receivership." (Record, p. 9.)

This consent was given after the Central railroad had filed its dependent bill, alleging its insolvency and praying the court to administer the property for the benefit of all interested. (Record, p. 9.)

V.

The right of intervenors to retake by attachment the coal on the bins or to rescind the contract when all the facts were ascertained and recover such coal was defeated by the consumption of the coal by the receiver.

The conduct of the receiver in continuing to receive the cars of coal which continued to arrive after his appointment, to wit, during the months of March, April, May, and even as late as June (p. 140), justified the intervenors in the belief that the contract would be adopted by the receiver and settlement made under it.

The order of the court directing the receivers to pay current expenses, etc., due by the Central (p. 7) warranted intervenors in the assumption that their debt would be paid, and in failing to move promptly for the issue of an attachment by leave of the court or for rescision.

The Code of Georgia provides for an "attachment for purchase-money," as follows:

SEC. 4539. Process of attachment may issue in behalf of any creditor whose debt is created by the purchase of property, upon such debt becoming due, when the debtor who created such debt is in possession of some of the property for the purchase of which the debt was created, or has sold and is not in possession of a part of said property, and has not been paid for the same, or where said property is in possession of any one holding the same for the benefit of said debtor, or in fraud against such creditor; and judgments on such attachments shall take rank from the date of the levy of the attachment.

SEC. 4540. Before process of attachment shall issue under the preceding section the party seeking the attachment, his agent or attorney-at-law, shall make affidavit before some person authorized by law to issue attachments that the debtor has placed himself in the position mentioned in said section, and also the amount of the debt claimed to be due, and shall also describe in the affidavit the property for which the debt was created. When the affidavit is made by the agent or attorney-at-law he may swear that the amount claimed to be due is due according to the best of his knowledge or belief. The officer issuing the attachment, before issuing the same, shall take from the party seeking the attachment a bond in double the amount claimed to be due, conditioned and made payable as attachment bonds are required to be conditioned and made payable.

SEC. 4541. Affidavit being thus made and bond given, it shall be the duty of the officer before whom such affidavit is made, to issue an attachment against the defendant, which shall be levied only on the property described in said affidavit, by the officer to whom the attachment is directed; or, any officer in this State who is authorized, may issue a summons of garnishment requiring any third party who may have purchased from defendant any part of the same property which the plaintiff sold the defendant, to answer what he may owe the defendant in attachment for any part of the property described in the plaintiff's affidavit, without requiring other or additional bond to be given by plaintiff.

VI.

The controverted statements in appellant's brief are not deemed material, but are believed to be correct.

1. The parenthesis objected to appears in the stipulation on page 51, to which appellant's brief refers. We claim nothing under the parenthesis.

2. When the receiver was applied for the lawfulness of the lease was not even asserted.

This is controverted and reference made to Record, top of page 5, where the full language is that the Central, in its answer to the bill, stated "that it had, *up to that time*, continued in good faith to assert the legality and validity of the lease."

"Up to that time" was up to the time when the receiver was applied for. At that time, "in view of the disclaimers filed by said (Danville and Pacific) companies, [the Central] submits to the jurisdiction of the court the course it shall pursue in reference to said contract of lease," etc. (p. 5).

Then, it seems to us to be true that "when the receiver was applied for the lawfulness of the lease was not even asserted."

Counsel for the Central in the court below appear to have denied the lease or its validity. (Exceptions to master's report, p. 187.)

It is proper to state that the counsel actively representing the Central in the court below and in the circuit court of appeals are not the same counsel who prepared the brief for petitioners in this Court.

This also explains the controverted statement relative to the decisions of the circuit court construing the Georgia statute of 1876. (Appellant's Brief, p. 33; Petitioners' Brief, p. 26.)

5. The Pacific Company turned the Central property over to the Danville "without a syllable of writing."

The answer of the Pacific Company showed that it had been leased to the Danville since 1888, since which time it had done no business as a common carrier, but "on or about the 1st day of June (1891) it requested the Danville Com-

pany to assume the control and management of the property of the Central Company, with which request the Danville Company complied" (p. 4). It is not stated in the record that this "request" was in writing. It is a fair inference to be made in argument that if any writing was entered into, it would have been so stated. The language of appellant's brief on this point is the language of the circuit court in a decision on an intervention in the same litigation (p. 28).

VII.

The definition of betterments in petitioners' brief is too restricted.

Rapalje & Lawrence's Law Dictionary gives the following :

"1. Improvements made upon an estate by the occupant or possessor, such as building, draining, fencing, etc., more extensive in character than mere repairs.

"2. The increase in value of an estate by reason of some public improvement thereon."

Walter B. Hill

Nathaniel E. Harris

VIRGINIA AND ALABAMA COAL COMPANY *v.*
CENTRAL RAILROAD AND BANKING COMPANY
OF GEORGIA.

CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIFTH
CIRCUIT.

No. 100. Argued December 14, 15, 1897. — Decided May 9, 1898.

Where expenditures have been made which were essentially necessary to enable a railroad to be operated as a continuing business, and it was the expectation of the creditors that the indebtedness so created would be paid out of the current earnings of the company, a superior equity arises, in case the property is put into the hands of a receiver, in favor of the material man, as against mortgage bondholders, in income arising from the operation of the property both before and after the appointment of the receiver, which equity is not affected by the fact that the company itself is the purchaser of the supplies, but is solely dependent upon the facts that the supplies were sold and purchased for use, that they were used in the operation of the road, that they were essential for such operation, and that the sale was not made simply upon personal credit, but upon

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the understanding, tacit or expressed, that the current earnings would be appropriated for the payment of the debt.

Upon the evidence contained in the record it is *Held*, that in the contract with the Virginia and Alabama Coal Company and in that with the Sloss Iron and Steel Company, it was the intention of the parties that the coal furnished was to be used in the operation of the lines of the Central Company, and that the Coal Companies looked to the earnings of the Central System as the source from which the funds to pay for the coal to be furnished were to be derived.

In concluding that the claims of the intervenors were entitled to priority out of the surplus earnings which arose during the control of the road by the court, this court must not be understood as in anywise detracting from the force of the intimations contained in its opinions in *Kneeland v. American Loan & Trust Co.*, 136 U. S. 89, and *Thomas v. Western Car Co.*, 149 U. S. 95.

On December 19, 1888, the Georgia Pacific Railroad Company leased its line of railroad extending from Atlanta to Birmingham, Alabama, to the Richmond and Danville Railroad Company, a corporation organized under the laws of Virginia, and which owned or controlled by lease a line of railroad from Atlanta to Washington, in the District of Columbia; and, thereafter, the Georgia Pacific road was operated by the Richmond and Danville Company. On June 1, 1891, the Central Railroad and Banking Company of Georgia, a corporation under the laws of Georgia, owning and operating a line of railroad from Atlanta to Savannah, Georgia, and which owned or controlled various other railroads or lines of steamships and a large amount of other property, executed a lease for ninety-nine years of said railroad and various lines and property controlled by it to the Georgia Pacific Company. The lease was signed on behalf of the Georgia Pacific Company by its president, pursuant to the direction of the board of directors of the company, but it was subsequently asserted that this was done without previous authorization or ratification of the stockholders. The Georgia Pacific Company did not take possession of the property of the Central Company or assume or exercise any control over the same, except that on the date of the lease it requested the Richmond and Danville Company to assume the control of the leased property, with which request there was an immediate compliance.

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In March, 1892, a suit was instituted in the Circuit Court of the United States for the Eastern Division of the Southern District of Georgia by Rowena M. Clarke, a stockholder of the Central Company, to obtain a cancellation of the lease of the property of that company and other specific relief. A temporary receiver was appointed on March 4, 1892. The Danville Company, as also the Georgia Pacific Company, appeared and disclaimed any rights under the lease, and, on March 28, 1892, the preliminary receiver, and other persons constituting the then board of directors of the Central Company, were appointed joint receivers to take charge of the railroad property and assets of the Central Company until there could be a reorganization of such board in pursuance to its charter.

As ancillary to Mrs. Clarke's bill, the Central Company, on July 4, 1892, filed a bill against the Farmers' Loan and Trust Company of New York, trustee, and other creditors, averring its inability to meet many matured obligations, and that it had defaulted on July 1, 1892, on the semi-annual interest due on \$5,000,000 mortgage bonds dated October 1, 1872, for which the Farmers' Loan and Trust Company was trustee, and that for these reasons the directors were unable to assume the management of the property, and requesting the court by proper process to call upon its creditors to come into court, and that the court would administer the property for the benefit of all interested. The Farmers' Loan and Trust Company assented to the continuance of the receivership; and, on July 15, 1892, under the depending bill, all the receivers, with the exception of one H. M. Comer, were discharged, and Mr. Comer was continued as receiver.

Subsequently, in May, 1893, under bills filed to foreclose a mortgage executed by the Savannah and Western Railroad Company, Comer and one Lowry were appointed receivers, and directed to continue to operate the road as part of the system of the Central Company.

On January 23, 1893, the Farmers' Loan and Trust Company of New York, trustee for the mortgage bondholders of the Central Railroad and Banking Company of Georgia, filed its dependent bill in said court for the foreclosure of the five

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million dollar mortgage on the main stem of the Central Railroad from Atlanta to Savannah because of default in the payment of the interest due July 1, 1892, and the receivership was extended to that bill.

In an agreed statement of facts contained in the record, it was stipulated as follows:

"It is a fact that since the receivership the receivers of the Central Railroad and Banking Company of Georgia have expended [for] betterments in its railroad lines from the income of the roads during the receivership a sum much larger than the entire claim of the intervenors."

On June 30, 1893, a final decree was entered dismissing, for want of equity, the bill filed on behalf of Mrs. Clarke, it being, however, recited that the validity of the lease by the Central Company was not passed upon.

On May 26, 1892, the Virginia and Alabama Coal Company was allowed to become a party complainant in the Clarke suit and to file an intervening petition therein. The Central Company and its receivers and the Danville Company were made parties defendant to the intervention. It was averred in the petition that the Danville Company, while operating the Central Company, purchased from the intervenor, for the use and benefit of the Central, in its several divisions, coal, which purchase was made in pursuance of a contract of Danville, dated July 13, 1891. For coal furnished under said contract and actually delivered to the Central Company, (against which latter company in the course of said business the bills were originally made out,) and used by said Central Company in the running of its machinery, \$26,607.44, as shown by a statement of account annexed to the petition.

The contract referred to in the petition reads as follows:

"Richmond and Danville Railroad Company.

"Office general purchasing agent; Joseph P. Minetree, general purchasing agent, Atlanta, Ga.

"The Virginia and Alabama Coal Company; Mr. J. R. Ryan, V. P. and G. M., Birmingham, Ala.

"DEAR SIR: We beg to accept your verbal offer of to-day

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to furnish the C. R. and B. Co. of Ga. with, say 275,000 tons of best quality engine steam coal for the next twelve months, commencing July 1, 1891, and ending July 1, 1892, at 90 cents per ton of 2000 pounds, to be delivered on cars at mines, and to be shipped at times and in quantities to suit. Settlements for the coal delivered in any one month to be made on or about the first of the second succeeding month, and the C. R. and B. Co. of Ga. reserves the right to increase or decrease the monthly deliveries upon reasonable notice at any time. The division superintendents of the divisions for which the coal will be required will communicate with you as to the monthly deliveries, and all bills for coal furnished under this contract to be sent direct to the division superintendents. Kindly confirm this at once, and oblige, yours truly,

“(Signed)

JOSEPH P. MINETREE,

“*General Purchasing Agent.*

“July 13, 1891.”

Besides asking a decree against all the defendants jointly for the amount claimed with interest, the petition prayed for general relief. The petition was subsequently amended by averring that the Danville Company was liable under the contract or purchase, and that the Central Company was liable because the coal was bought and actually used for the benefit of the Central Company of Georgia.

An amendment was subsequently filed to the petition, setting up that the coal delivered by the Virginia Company had been furnished to the Central Company under the contract recited in the petition, and that said coal was furnished to the Central Company for the purpose of being used by it in the running of its machinery and the prosecution of its business; that a great portion of said coal remained on hand in the bins and storage places of the Central Company at the time of the appointment of the temporary receiver, and a large portion was still on hand when the board of receivers was appointed, and went into the possession of said receivers, and had since that time been actually used by the receivers in the running of the machinery of and the operation of the business of the

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Central Company, and it was asked that an account might be taken as to the portions so used, and that it should be decreed to be a part of the operating expenses of the railroad company in the hands of the receivers, to be paid as a part of the expenses of the receivership.

On December 3, 1892, the Virginia and Alabama Coal Company, suing for the use of the Sloss Iron and Steel Company, a corporation under the laws of the State of Alabama, filed a further intervening petition, asking payment of an account aggregating \$14,359.38, for coal furnished for use on the Central lines by the Sloss Company, under the contract between the Danville Company and the Virginia Company. Grounds of recovery were stated similar to those relied upon in the prior intervention, it being also insisted that if recovery was allowed against the receiver only for the coal used by him, it should be paid for at its value at the place where used, viz., \$2.50 per ton.

To these interventions the Central Company and the receivers thereof separately demurred, while the Danville Company filed motions asking that it be dismissed as a party defendant thereto. The motions were overruled, while decisions upon the demurrers were deferred until the hearing of the interventions.

The issues raised by the respective interventions were referred to a master for report and decision. At different dates the master reported, recommending judgments in favor of the Virginia and Alabama Coal Company, on its behalf and as suing for the use of the Sloss Company, against the Danville and Central Companies and the receiver of the Central, jointly and severally, for the full amounts claimed with interest, and that upon the payment of the amount of the decree by the Central Company or its receiver, a judgment should be entered in its or his favor against the Richmond and Danville Company for whatever sum might be paid for coal delivered prior to March 4, 1892, and actually used before the appointment of a receiver. By a supplemental report the master reduced the judgment against the receiver for the benefit of the Virginia Company solely, by the sum \$5543.10, with interest, and

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the judgment for the use of the Sloss Company for the sum of \$2682.80, owing to the fact that a specified quantity of the coal which had been sold and delivered under the contract had not been used on the lines of the Central Company, but by lines held to be independent roads. Exceptions were filed to the master's report, both as to his findings of fact and conclusions of law, on behalf of all parties to the intervention. The reports of the master and the exceptions filed thereto came on for hearing before the court; and, on December 29, 1893, an order was entered sustaining the exceptions in part and overruling them in part. A final decree was entered on January 1, 1894, and amended on March 31, 1894, setting aside the reports and adjudging that the Virginia and Alabama Coal Company recover from the Central Company \$6171.98 for the "amount of unpaid for coal" in cars consigned to the officers of the Richmond and Danville Railroad Company, and which was unloaded after March 4, 1892, and appropriated by the receivers of the company, being 6857.75 tons, at ninety cents per ton; and the Virginia and Alabama Coal Company, suing for the use of the Sloss Iron and Steel Company, was adjudged to recover of the Central Company \$735.16, for 816.85 tons of coal at ninety cents per ton, being the amount of unpaid for coal unloaded after March 4, 1892, and appropriated by the receivers. The receivers of the Central Company were directed to pay the sums so found due out of the current earnings of the Central Railroad and Banking Company in their hands.

An appeal was prosecuted from the final decree to the Circuit Court of Appeals for the Fifth Circuit, which court, on February 25, 1895, reversed the decree of the Circuit Court, 30 U. S. App. 263, and remanded the cause to that court "with instructions to enter a decree in favor of the intervenors, the Virginia and Alabama Coal Company and the Sloss Iron and Steel Company, for the amounts respectively due them for coal delivered to the lines under the control and forming a part of the system of the Central Railroad and Banking Company of Georgia, as shown by the evidence in this cause, including the coal furnished before the appoint-

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ment of the receivers and that found in the bins of the line after such appointment and of which the receivers took possession, as well as the coal delivered to the receivers after their appointment, the amount due being determined by the contract price, and an order that they recover from the Central Railroad and Banking Company of Georgia and the receivers of the same such sums thus found to be due. No decree will be entered in favor of the intervenors for the payment of that portion of the coal which was used by the Charlotte, Columbia and Augusta Railroad Company."

An application for a rehearing being denied, a writ of certiorari was allowed by this court.

Mr. Thomas Mayhew Cunningham, Jr., and Mr. Alexander Rudolf Lawton for the Central Railroad and Banking Company.

Mr. Walter B. Hill and Mr. N. E. Harris for the Virginia and Alabama Coal Company.

MR. JUSTICE WHITE, after making the foregoing statement, delivered the opinion of the court.

In each of the intervening petitions a liability of the Central Company was asserted to arise from the fact that the coal was sold to and purchased by the Danville Company for use in operating the lines of railway of the Central Company, and in the lower courts, as in this court, it was contended that under the prayer for general relief the petitioners were entitled to have their demands allowed as a preferential claim against any surplus income which might arise from the operation of the Central road under the receiver, after payment of the ordinary expenses of operation, or out of the corpus of the estate or the proceeds of sale thereof, in the event that the income had been diverted by the receivers in expenditures for betterments.

Had the Central Company, through its own officers, operated its line of railway during the period when the coal in question

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was furnished, it cannot be doubted, in the light of the decision in *Burnham v. Bowen*, 111 U. S. 776, that in the event that the company failed to make payment for such coal while a going concern, the indebtedness created, upon the appointment of a receiver might have been properly allowed as a charge upon the surplus income arising during the receivership. In the case referred to, an Iowa state court in the early part of 1875, and subsequently, by removal, a Circuit Court of the United States sitting in equity, took possession of, and operated through a receiver, a line of railway owned by the Chicago, Dubuque and Minnesota Railroad Company. When the receiver took control the company was indebted to the Northern Illinois Coal and Iron Company for coal furnished "during 1874," and used in running locomotives. During the receivership there was paid from the earnings which came into the hands of the receiver the amount of a judgment indebtedness for lands purchased by the company for its depot and offices, and also several judgments rendered against the company for its right of way. The sum of these payments by the receiver exceeded the amount of the indebtedness owing for the coal furnished as above stated. In October, 1876, a decree of strict foreclosure was entered, in which, however, a reservation was made, for future decision, of all matters in controversy between the plaintiffs and all and any of the defendants and intervenors and claimants. Among the persons who had intervened in the foreclosure proceedings was one Bowen, who had acquired acceptances which had been given to the coal company for the indebtedness referred to. He petitioned for a judgment against the railroad company for the amount of such indebtedness, "and that such judgment be declared a lien on the property and road of said company in the hands of said trustees and their grantees." A decree was entered on October 30, 1880, finding due to Bowen on his claim a specified sum, and declaring that the mortgaged property in the hands of the trustees under the decree of foreclosure was equitably bound for the payment thereof, "said property having passed to said trustees subject to the rights and equities of said Bowen, intervenor,

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and said trustees, and all parties holding under them, taking said property subject to such rights and equities on the part of said Bowen, intervenor." Provision was then made for a sale of the property if the claim was not paid. An appeal having been taken by the trustees, this court held that, at time of the appointment of the receiver, the indebtedness in question was one of the current debts for operating expenses made in the ordinary course of a continuing business, to be paid out of current earnings. In the course of the opinion, speaking through Mr. Chief Justice Waite, the court reiterated the doctrine enunciated in *Fosdick v. Schall*, 99 U. S. 235, 252, where it was declared that: "The income [of a railroad company] out of which the mortgagee is to be paid is the net income obtained by deducting from the gross earnings what is required for necessary operating and managing expenses, proper equipment and useful improvements. Every railroad mortgagee in accepting his security impliedly agrees that the current debts made in the ordinary course of business shall be paid from the current receipts before he has any claim on the income."

And it was further said pp. 781, 782:

"So far as anything appears on the record, the failure of the company to pay the debt to Bowen was due alone to the fact that the expenses of running the road and preserving the security of the bondholders were greater than the receipts from the business. Under these circumstances, we think the debt was a charge in equity on the continuing income, as well that which came into the hands of the court after the receiver was appointed as that before. When, therefore, the court took the earnings of the receivership and applied them to the payment of the fixed charges on the railroad structures, thus increasing the security of the bondholders at the expense of the labor and supply creditors, there was such a diversion of what is denominated in *Fosdick v. Schall*, the 'current debt fund,' as to make it proper to require the mortgagees to pay it back. So far as current expense creditors are concerned, the court should use the income of the receivership in the way the company would have been bound in equity and good conscience

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to use it if no change in the possession had been made. This rule is in strict accordance with the decision in *Fosdick v. Schall*, which we see no reason to modify in any particular."

It was thus settled that where coal is purchased by a railroad company for use in operating lines of railway owned and controlled by it, in order that they may be continued as a going concern, and where it was the expectation of the parties that the coal was to be paid for out of current earnings, the indebtedness, as between the party furnishing the materials and supplies and the holders of bonds secured by a mortgage upon the property is a charge in equity on the continuing income as well that which may come into the hands of a court after a receiver has been appointed as that before. It is immaterial in such case, in determining the right to be compensated out of the surplus earnings of the receivership, whether or not during the operation of the railroad by the company there had been a diversion of income for the benefit of the mortgage bondholders, either in payment of interest on mortgage bonds or expenditures for permanent improvements upon the property. Nor is the equity of a current supply claimant in subsequent income arising from the operation of a railroad under the direction of the court affected by the fact that while the company is operating its road its income is misappropriated and diverted to purposes which do not inure to the benefit of the mortgage bondholders and are foreign to the beneficial maintenance, preservation and improvement of the property. This principle finds support in *Miltenberger v. Logansport Railway Company*, 106 U. S. 286, 311, 312, the decision in which case was approvingly referred to in *Union Trust Company v. Illinois Midland Company*, 117 U. S. 434, and in the recent case of *Thomas v. Western Car Company*, 149 U. S. 95, 110. In the *Trust Company case*, the court said (p. 456):

"The principle laid down in *Wallace v. Loomis* was applied in *Miltenberger v. Logansport Railway Company*, 106 U. S. 286, 311, 312. In that case a bill was filed by a second mortgagee against the mortgagor and a first mortgagee and judgment creditors of the mortgagor to foreclose a mortgage on

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a railroad. On the day the bill was filed, and without notice to the first mortgagee, a receiver was appointed, and power given him to operate and manage the road, 'receive its revenues, pay its operating expenses, make repairs, and manage its entire business, and to pay the arrears due for operating expenses for a period in the past not exceeding ninety days, and to pay into the court all revenue over operating expenses.' After that, and without notice to the first mortgagee, who had not appeared, though notified of the order appointing the receiver, and of the pendency of the suit, the court authorized the receiver to purchase engines and cars, and to adjust liens on cars, owned by the mortgagor, and to pay indebtedness not exceeding \$10,000, to other connecting lines of road, in settlement of ticket and freight accounts and balances, and for materials and repairs, which had accrued in part more than ninety days before the order appointing the receiver was made, and to construct five miles of new road, and a bridge. The petition for the order stated the necessity for the rolling stock and for the adjustment of the liens; that the payment of the connecting lines was indispensable to the business of the road, and it would suffer great detriment unless that was provided for; and that the new road and the bridge would come under the mortgages, and their construction would be to the advantage of the bondholders. After the first mortgagee had appeared and answered, an order was made, but not on prior notice to it, authorizing the receiver to issue certificates to pay for rolling stock he had bought under orders of the court, and to pay debts incurred for building the five miles of road and the bridge, under those orders, and to pay debts incurred for taxes, and rights of way, and back pay, and supplies in operating the road, the certificates to be payable out of income, and, if not so paid, to be provided for by the court in its final order. Claims thus arising were afterwards allowed to be paid out of the proceeds of sale before the mortgage bonds. This court upheld such priority, as to the debts for the purchase of rolling stock, and for the adjustment of liens, and for the construction of the five miles of road and the bridge, and for the amount due connecting lines,

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some of which were incurred more than ninety days before the receiver was appointed. On the latter branch of the subject it said: 'It cannot be affirmed that no items which accrued before the appointment of a receiver can be allowed in any case. Many circumstances may exist which may make it necessary and indispensable to the business of the road and the preservation of the property for the receiver to pay pre-existing debts of certain classes, out of the earnings of the receivership, or even the corpus of the property, under the order of the court, with a priority of lien. Yet the discretion to do so should be exercised with very great care. The payment of such debts stands, *prima facie*, on a different basis from the payment of claims arising under the receivership, while it may be brought within the principle of the latter by special circumstances. It is easy to see that the payment of unpaid debts for operating expenses, accrued within ninety days, due by a railroad company suddenly deprived of the control of its property, due to operatives in its employ, whose cessation from work simultaneously is to be deprecated, in the interests both of the property and of the public, and the payment of limited amounts due to other and connecting lines of road for materials and repairs, and for unpaid ticket and freight balances, the outcome of indispensable business relations, where a stoppage of the continuance of such business relations would be a probable result, in case of non payment, the general consequence involving largely, also, the interests and accommodations of travel and traffic, may well place such payments in the category of payments to preserve the mortgaged property in a large sense, by maintaining the good will and integrity of the enterprise, and entitle them to be made a first lien. This view of the public interest in such a highway for public use as a railroad is, as bearing on the maintenance and use of its franchises and property in the hands of a receiver, with a view to public convenience, was the subject of approval by this court, speaking by Mr. Justice Woods, in *Barton v. Barbour*, 104 U. S. 126.'"

Is there any good reason why the equitable doctrine applied in the cases to which we have referred should not be applied

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under a state of facts such as shown at bar, where the immediate management of a road was confided by its owners, without protest or interference by the bondholders, to third parties? It would seem not. The dominant feature of the doctrine, as applied in *Burnham v. Bowen*, is that where expenditures have been made which were essentially necessary to enable the road to be operated as a continuing business, and it was the expectation of the creditors that the indebtedness created would be paid out of the current earnings of the company, a superior equity arises in favor of the material man as against the mortgage bonds in the income arising both before and after the appointment of a receiver from the operation of the property.

The equity thus held to arise when a purchase of necessary current supplies is made by the owning company, is not in anywise influenced by the fact that the company itself is the purchaser of the supplies, but is solely dependent upon the fact that the supplies are sold and purchased for use, and that they are used in the operation of the road, that they are essential for such operation, and that the sale was not made simply upon personal credit, but upon the tacit or express understanding that the current earnings would be appropriated for the payment of the debt. Clearly, if the owning company had entered into an agreement with some individual to commit to his uncontrolled management as their agent the operation of the company's lines, the bondholders could not be heard to say that thereby no equities could arise in favor of labor or supply claimants in the income of the property preserved or kept in operation by their efforts. This would be the category in which the Danville Company would stand if the lease of the Central lines was not valid. On the other hand, if the lease was lawful, upon the insolvency for any cause of the Danville Company while the lease continued in force, its relation toward its leased line in the adjustment and settlement, as against the leased road, of equities arising between those who had furnished supplies to the road and the bondholders would be precisely that of an owner of the leased lines, and if such possession is terminated by the court through

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the agency of a receiver equities in the income of the property continue to survive.

Upon the evidence contained in the record, we hold that the contract upon which both intervenors relied — the deliveries of coal furnished by the Sloss Company being under the contract which had been made with the Virginia Company — was made with the Danville Company, but we conclude from the terms of the contract that the intention of the parties was that the coal was to be used in the operation of the lines of the Central Company, and that the mining companies did not rely simply upon the responsibility of the Danville Company, but on the contrary that the coal companies looked to the earnings of the Central system as the source from which the funds to pay for the coal, to be furnished was to be derived.

While it was established that during the time the Danville Company was in control of the Central property a semi-annual instalment of interest — which exceeded the amount of the claims of the intervenors — was paid to the holders of bonds of the Central Company, we cannot say that there was a diversion of income from the Central lines for such purpose. At the best it could only be conjectured that such payment was probably made from that income. Whether, however, there was a diversion of income before the receivership, inuring to the benefit of the bondholders, the equity in favor of the coal company for payment out of subsequent income, as we have seen, survived and attached to the property when it was taken possession of by the receiver; and if a surplus of income was created by the operations of the road under the receiver, sufficient to satisfy the claims of the intervenors, the right to demand that the surplus income be applied in satisfaction of the claims in question was undoubted. From the evidence we find that there was such surplus. It was stipulated in the record, as a fact, "that since the receivership, the receivers of the Central Railroad and Banking Company of Georgia have expended for betterments on its railroad lines from the income of the roads during the receivership a sum much larger than the entire claim of the intervenors." Keep-

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ing in mind the manifest purpose of this stipulation, which undoubtedly was to present the question of the right of the claimants to resort to the corpus of the estate for payment of their claims, we must give the term "betterments" a broad and not a restricted meaning. So construed, it must be held to have referred to expenditures for the improvement of the property as distinguished from mere payments for operating expenses and ordinary repairs which are usual and legitimate terms of outlay from current receipts. This is the sense in which the term was understood by this court in *Union Trust Company v. Illinois Midland Company*, 117 U. S. 434, where the validity of receivers' certificates was upheld, which had been paid out of the proceeds of the sale of the corpus of the property, because issued to replace earnings diverted from paying operating expenses and ordinary repairs to payment of betterments (p. 462).

The circumstance that it is uncertain from the terms of the stipulation, whether the expenditures for betterments were made by the receivers under the stockholders' bill, or under the bill filed by the Central Company or under the trustee's bill for foreclosure, is immaterial. Even though the mortgages securing the bonds provided for the sequestration by foreclosure of the income of the road for the benefit of the bondholders, for reasons already stated, that income until strict foreclosure or a sale of the road was charged with the prior equity of unpaid supply claimants such as those now before the court.

In concluding that the claims of the intervenors were entitled to priority out of the surplus earnings which arose during the control of the road by the court, we must not be understood as in anywise detracting from the force of the intimations contained in the recent utterances of this court in the *Kneeland* (136 U. S. 89) and *Thomas* (149 U. S. 95) cases, as to the necessity of a court of equity confining itself within very restricted limits in the application of the doctrine that in certain cases a court having a road or fund under its control may be justified in awarding priority over the claims of mortgage bondholders to unsecured claims originating prior

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to a receivership. In the *Kneeland case*, however, the claim refused priority was based upon an alleged instrument of lease, and was for four months' rental of cars operated on a line of railroad by a receiver appointed at the suit of a judgment creditor, such receiver being succeeded in office by a receiver appointed in the foreclosure proceedings instituted by the trustees of the mortgage bondholders. It was held that the alleged contracts of lease were in substance and effect "antecedent contracts of sale;" that in those contracts ample provision had been made by the vendor for his security, by stipulations authorizing a retaking of the property upon failure to make payment promptly of the instalments of purchase money as they became due, and that the claim against the fund was in reality for a portion of the purchase price of the cars. Under these circumstances, the debt was held not to be embraced "in the few specified and limited cases" in which this court "has declared that unsecured claims were entitled to priority over mortgage debts;" and particular attention was called, among other things, to the fact that the receivership at the suit of the judgment creditor was not for the benefit of the mortgage bondholders, so that it could not be asserted that the expenditures of such receivership were payable in any event out of the income or corpus of the property; and the fact was also noticed that from the time of the purchase of the rolling stock in question in the suit to the time of the final disposition of the mortgage foreclosure the receipts did not equal the operating expenses, and there had been no diversion of the current earnings, either to the payment of interest or the permanent improvement of the property. In the *Thomas case*, claims for rental of cars, which rental had accrued prior to the receivership, were denied priority over the mortgage bonds, but the facts in that case were such as to justify the conclusion that the car company contracted "upon the responsibility of the railroad company, and not in reliance upon the interposition of a court of equity." In neither the *Kneeland* nor the *Thomas case* was there any intention to question the prior decisions of the court, which allowed priority to claims based upon the

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furnishing of essential and necessary current supplies, not sold upon mere personal credit, against the surplus income arising during the operation of the road under the direction of a court of equity.

In view of the conclusion which we have reached, none of the other matters urged in argument need be noticed. The decree of the Circuit Court of Appeals being in consonance with the views we have expressed, the decree of that court is

Affirmed.

MR. JUSTICE PECKHAM and MR. JUSTICE MCKENNA, not having heard the argument, take no part in this decision.
